(28,853)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

No. 341.

CURTIS, COLLINS & HOLBROOK COMPANY, APPELLANT,

vs.

THE UNITED STATES OF AMERICA.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

VOLUME III.

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(Testimony of Elijah Taylor.)

"Q. Were you given any money that day at all by anybody?

"A. Yes, I was given some money that day.

"Q. How much were you given that day?

"A. I th.nk I was given $412 or $412.50.

"Q. Where were you given this $412?

"A. In the Emerson Hotel, upstairs.

I do not remember just who were there when I was given the money. I think that Mr. John Gray and Robert Taylor were present. I do not remember whether John Aid was in the room, or not. Charles Moore was in Susanville, but I do not remember whether he was there in the room, I do not know who handed me the money. There were others there in the room, but I have forgotten who they were. There was no one in the room outside of our own party at the time I was given the $412. I do not know Arthur Elam or whether I ever met a man by the name of George Tuman or not. I think I met a man called by that name.

"Q. You have met a man they called George Tuman? A. Yes. [722]

I do not remember whether Tuman was there or not. I would not know the man now if I saw him, and I did not hear his name mentioned that day. I could not swear that any other members of the party on that day received money except myself.

"Q. Do you remember who handed you the money?

"A. No, I don't. I heard no names, and I would

(Testimony of Elijah Taylor.)

not know the man if I saw him."

The MASTER.—"Q. Was this before or after you had proved up? A. After.

"Q. The same day, though?

"A. The same day, in the afternoon, the same day.

"Q. Had you paid the Land Office your money yet—when you received this $412, had you paid the Land Office your money already?

"A. I received this money there before I paid the Land Office.

"Q. You took the $412 you received there in one pocket, and took your money out of the other pocket, and gave it to the Land Office?

"A. That is just right; you are right there.

"Q. Did you give a promissory note for that $412? A. I did not give anything.

"Q. Did you expect to pay that back to anybody, to give that money back to anybody?

"A. No, I did not.

"Q. What did you consider that you were given that $412 for? [723]

"A. For my land that I had calculated to pay the Government for.

"Q. Now, did you have any talk with anybody after you filed on the land about disposing of your land to them? A. No.

"Q. Do you remember what the $12 was for?

"A. Office fees, I suppose.

I do not remember whether or not I paid fees when I filed on the land. It don't seem to me as though I

(Testimony of Elijah Taylor.)

had paid them anything when I filed on the land. It has been so long that I cannot really remember just how it happened as I paid no attention to it until two or three years ago. After I had made proof I executed the deed disposing of the land in Costar's office in Prattville.

"Q. Was the deed all ready for you or did you have the deed handed to you before that time?

"A. I suppose it was made out; I merely signed it and received my expense money and the $100.

I could not tell whether it was Mr. Costar or someone else who handed me the $100 and expense money,

The MASTER.—"Q. Who else was present?

"A. There were several present; I think John L. Gray was present, R. C. Taylor, and probably Butler, and Mr. Moore; I would not say for sure whether they were not, I think, if I am not mistaken, John Aid was present too."

I would not be positive that Aid was present. I know there were a number in the office at the time There were several in the office but the only ones that I can recall that were there are the ones I have named and I would not be sure that they were all there. [724]

"Q. Did Mr. Costar tell you where he got the money? A. No.

"Q. Did you see George Tuman, this man that you called George Tuman, while you were at Prattville?

"A. Well, I saw a man they called George Tuman.

"Q. Where did you see him?

"A. At the Bunnell Hotel.

(Testimony of Elijah Taylor.)

"Q. Did he say anything to you about your land at all? A. Not one word.

I think that John W. Aid took me to Costar's office at the time I executed the deed.

"Q. Now, did you ever receive any pay for your expenses in making the trip around by Reno to Susanville when you went to prove up? A. Yes.

"Q. Where did you get that expense money paid to you?

"A. In Chico. After I returned to Chico after proving up on the land.

When I returned home to Chico I came by way of Prattville where I executed the deed conveying the land on the return trip. At that time I executed the deed at Prattville I had a conversation there about the expense money that I was out in making the trip to prove up around by way of Reno.

"Q. Who did you have the conversation with?

"A. With John W. Aid."

I told him I paid out the expense on the railroad and the hotel bill and he said, "When we get back to Chico we will straighten that up. [725]

"Q. Did you raise that point before or after you executed the deed?

"A. I think it was before, if I am not mistaken, I think it was before.

The MASTER.—Who finally paid that expense money?

"A. I received that from Mr. John Aid.

"Q. You got that when you got back to Chico?

"A. Yes, after I had executed the deed.

(Testimony of Elijah Taylor.)

"Q. Now, going back to the initial conversation; that is the first conversation you had with John W. Aid, when he came to you and told you about taking up the land—he came to you as I remember your conversation you testified this: That he came to you and told you there was a chance to make a piece of money and that he could arrange to have all the expenses paid and all that if you would take up the land; is that correct?

"A. Well, it is in a certain way, correct, yes. He asked me if I had ever used my rights and I told him I had not. He says, 'There is a chance to take up a piece of land and a chance to sell it and make some money,' and I asked him about how much a man could realize on this amount of money invested and he told me what it would cost, $412 or $412.50, I don't remember just now, but it was something close to $412, and I asked him how long it would be the money would be tied up, and he told me that he thought probably would, that I could make $100 clear of all expenses, and I asked him how long it would take and he told me it would have to be advertised ten weeks after being filed on before I could prove up. I thought it would be a pretty good investment on $412 to make $100 clear of all expenses in 10 weeks. [726]

"Q. Did he say anything to you about that he could arrange to get the money to pay for your expenses and to pay for the land—did he say anything to you about that?

"A. I think there was some mention about it, in

(Testimony of Elijah Taylor.)

fact, I know there was, but I told him I did not want to borrow the money to pay for it because I had money of my own.

"Q. Then was there anything said about what assurance he would give you that the sale would take place?

"A. Well, there was something said that he was pretty sure I could sell it.

The MASTER.—"Q. Did he tell you who would buy it?

"A. No, he did not."

After John Aid had made this proposition that I mentioned to me I talked the matter over with my brother and John L. Gray and then I had another conversation with Aid in which I told him that I had talked the matter over with my brother and Gray and they were favorable to locating land and that I was willing to take up this land if I could make a piece of money out of it. I remember having a conversation with George Hall about this timber land a good while ago.

Mr. PIER.—Let me read one sentence from your affidavit.

Mr. SHURTLEFF.—You first say statement and then you say affidavit.

Mr. PIER.—I will show it to him. Is that your signature Mr. Taylor? A. Yes.

"Q. Do you remember signing that for Mr. Hall?

"A. I do. [727]

Mr. PIER.—"Q. In this affidavit, there is this statement, Mr. Taylor: 'The way I came to make said

(Testimony of Elijah Taylor.)

filing was as follows: John Aid came to me in Chico, California, and asked of me if I wanted to make a piece of money by locating a piece of timber land. I said I did if I could make anything out of it. John Aid told me he could arrange to furnish the money to pay for the land and to pay all expenses for filing and advertising the notice and all and allow me $100 for making the filing. This I agreed to do telling John Aid I would use my own money to pay for the land, but he could give me his money to secure me.' Now, what I wish to call your attention to particularly is this—do you remember making that statement to Mr. Hall at that time?

"A. I don't think that I made all the statement that he has got me there as making. I know I corrected him once in a statement he had made and he said, 'It does not make any difference about that.'

"Q. Let me ask you, what is it there that is not right?

"A. I would like to have that read over. I made the same statement to Mr. Hall that I have made here to-day—I made the very same statement to him.

"Q. The only point that I wish to refresh your memory on at all, if you did make any statement of this kind, at the time you made this statement, you told Mr. John W. Aid, 'This I agreed to do,' that is, you agreed to take up the land but you told Mr. Aid that you would use your own money to pay for your land, but he gave you his money as security. Now, did you make any statement to Mr. Aid that you would like him to put his money up as security

(Testimony of Elijah Taylor.)

with you before you paid out your own money? [728]

"A. I do not think I did. I said I would take up the land if I would be secured, and know that I could sell it without having my money tied up in this for years, a statement to that effect, but Mr. Hall has got that wrong. I corrected him too at the time when he made it, and wrote it—there is another statement that I made to another timber cruiser or United States Marshal, and I think if you will look at it you will find several erasures in it.

The MASTER.—"There was another thing in that statement that differed from the witness' testimony a little bit. I think the statement that you read from stated that John Aid said to the witness in Chico that he would see that he got a purchaser for the land and expenses, or words to that effect, Read that portion again.

Mr. PIER.—" 'John Aid told me he could arrange to furnish the money to pay for the land and to pay all expenses for filing and advertising the notice and all and allow me $100 for making the filing.' Now, that is practically his testimony.

"A. I do not think I made that statement to Mr. Hall that he said he would allow me $100. I made the statement that I asked Mr. Aid if he thought I could make $100 out of it.

"Q. Whose rig did you go in from Chico to Taylorville and then to Susanville?

"A. I could not say whose rig it was. John Aid was driving the rig.

"Q. Did you do anything toward paying the ex-

(Testimony of Elijah Taylor.)

penses of getting this rig? A. No. [729]

When I came back and talked with Mr. Aid after having interviewed my brother, Robert C. Taylor and Mr. Gray, relative to taking up timber land I told him that they were favorable. I think if I remember right, I referred him to them, and that I would not speak for them myself but that on my own behalf I was willing, that is as near as I can remember it now.

"Q. Now, let me read you another statement from Mr. Hall's affidavit and see if this refreshes your memory in any way, Mr. Taylor. This was on the trip—referring to this last trip when you made final proof: 'At Susanville, California, I met John Aid, Robert Taylor, John L. Gray, Charles Moore and Charles Butler. Before we went to the Land Office to make final proof we all, Elijah Taylor, Robert Taylor J. L. Gray, Charles Moore and Charles Butler, went to a room in the Emerson Hotel and John Aid gave us the money to pay for our land, and we went to the Land Office and made final proof and paid for the land.' Do you remember making that statement to Mr. Hall?

"A. I never made any statement to Mr. Hall that John Aid gave me any money.

"Q. You did not?

"A. Not to that effect, no, that John Aid or anybody else gave me that money. I told him I did not know where the money came from, I did not know who the parties were who gave me the money.

"Q. Do you know whether or not Mr. Taylor,

(Testimony of Elijah Taylor.)

there was a stranger in the room at the time you went in there?

"A. I rather think there were several in the room. I don't know who was in the room outside of John L. Gray, John Aid and Robert Taylor; I would not be positive that Butler or Moore were in the room. Nor would I be [730] positive that there was nobody there outside of our party at the time,

"Q. What did you do with the $412 you got at the Emerson Hotel?

"A. I put it in my pants pocket.

"Q. Did you ever return it to anybody—did you ever give that to anybody?

"A. Well, I don't know whether that question goes or not; I deposited some in the Bank of Butte County when I returned to Chico, and also some in several different saloons there.

Mr. SHURTLEFF.—"Q. Saloons, you say?

"A. Saloon safes, so that I had it handy when I wanted to use it.

Mr. PIER.—But you got that $412 and used it for your own purposes? A. I did, sir.

"Q. Did you ever pay anybody any fee for locating you on the land? A. No.

Cross-examination.

Mr. SHURTLEFF.—"Q. Mr. Taylor, prior to filing your application at Susanville, had you promised or agreed or led anyone to believe that you would convey or sell or deed the land to them? A. No.

Redirect Examination.

Mr. PIER.—"Q. Now, Mr. Shurtleff asked you

(Testimony of Elijah Taylor.)

that [731] question, if you had led anyone to believe that you would convey the land to them, before you made your application?

"A. I did not understand the question that way. I would like to have that question read. (Last question repeated by reporter.)

"A. No, not any person.

Mr. PIER.—"Q. Mr. Taylor, you stated that you had not led anyone to believe that you would convey the land to them. Where did you expect you would get your $412 from? How did you expect you would get the $412?

"A. I don't understand the question.

"Q. How did it come that somebody gave you $412? Did you have any conversation about $412 with anyone?

"A. The only conversation I had was with John Aid, that I wanted to be secured. But I did not promise to sell it to anybody, convey it to anybody.

"Q. Now, Mr. Taylor, when somebody gave you $400 to secure you, would they give you $400 to secure you without some idea that they were going to get the land?

"A. I don't know. Somebody is liable to give you $400 for looking at you, I couldn't tell you that.

"Q. Does it seem reasonable, Mr. Taylor, that somebody would give you $400 without any promise to pay it back?

"A. Mr. Aid told me he was pretty sure I could sell the land and realize out of it, and I supposed that the money was given to me to secure it."

(Testimony of Elijah Taylor.)

I do not know that the conversation that I had with Mr. Aid was sufficient to cause anyone to advance $412 for me. Mr. Aid might have told them to that effect and then they advanced the money but I do not know anything about it, he never mentioned it to me. [732]

"Q. As a matter of fact, you are not in a position to say right now that you did cause anybody to think that they were going to get the land? A. No.

"Q. Do you understand my question? My question was, you could not say right now that you had not said something to John W. Aid that caused them to believe they were going to get your land?

"A. I told John Aid if I could sell the land after proving up I would do so.

"Q. And you were willing to do it for $100?

"A. I did not say that I was willing to do it for $100.

He said possibly $100 or more than expenses could be made out of it, something to that effect, and I was willing to take it up on that basis.

Recross-examination.

Mr. SHURTLEFF.—"Q. At the time and prior to your proving up, did you know of any reason why you could not have conveyed or sold that land to whomsoever you pleased?

"A. No reason in the world that I could not have conveyed the land to anybody.

I had no contract to convey with anybody. As near as I can remember I would receive about $512 clear of expenses and the $400 that I was to receive

(Testimony of Elijah Taylor.)

was a part payment on that price as I understood it.

Mr. PIER.—"Q. Mr. Taylor, on these various trips that you took to this land did you pay the expenses yourself, any of them? [733]

"A. Only the one way, by Reno, I paid my fare.

"Q. You were reimbursed for that you have testified? A. Yes.

"Q. Had you promised anybody that you would pay back any of that money that was paid out on your expenses? A. No."

I did not execute a note for any sum of money in connection with the taking up of this timber land to my knowledge. I signed but one paper and that was in Prattville.

"Q. You signed your name in the Land Office proceedings?

"A. I mean outside of the Land Office.

"Q. That was when you signed your deed?

"A. Yes.

"Q. Did you sign it at any other time besides in the Land Office and the time that you signed the deed? A. Only that once, I think.

Cross-examination.

Mr. SHURTLEFF.—"Q. Had you stated to anybody you would not return the expense money?

"A. No, I had not.

"Q. That was not discussed one way or the other, was it?

"A. Never has been discussed, no, and I had never been asked to return it. [734]

Testimony of Robert C. Taylor, for Complainant.

ROBERT C. TAYLOR, called as a witness for complainant, testified as follows:

My name is Robert C. Taylor; age, 44 years; residence, Chico, California; occupation, carpenter and common laborer. In 1902 I took up some timber land in Plumas County. I do not remember what I was doing that year but during the summer I worked in Modoc County through the harvest season. I was in Chico, California, when I decided to take up the timber land. A party including J. L. Gray, Charles Butler, Charles Moore, my brother Elijah Taylor and myself were taken from Chico to Taylorville by John S. Aid and were shown the timber land by a man named Remick. I do not know what his initials are. He is the gentleman sitting at the end of the table here.

"Q. Did you have any conversation with Mr. John Aid, the man that took you out, before you went? A. Yes.

"Q. Where did that conversation take place?

"A. Chico.

"Q. Whereabouts in Chico? A. In a saloon.

"Q. Did he come to you or did you go to him?

"A. He came to me.

He asked me if I had used my timber right. I told him that I had not and he said there were a great many people locating timber claims up in the high Sierra Mountains and [735] if I had not used my right there would be a chance for me to go up and

(Testimony of Robert C. Taylor.)

locate a piece of timber. I cannot remember all that might have been said but we talked the matter over and I told him that my brother was out there and to talk to him. I might have gone out myself and spoken to my brother but I do not remember whether I did or not. I know we were not in the same room and I do not think I said anything more to Mr. Aid that night. I could not say whether it was the next day or when it was that I told him that I had decided to take up timber land. I do not think it was but a very few days from the time that he first came and saw me until we started out to look at the timber lands. At the time that Aid first came and spoke to me I was dealing poker in a saloon. There were two individuals had the game and I was employed by them.

"Q. What did you call your position at the table, or did you have any?

"A. Game-keeper."

When we got to Taylorville and went out to look at the land I think we spent two nights in Taylorville, although I will not be positive.

"Q. Did Mr. Remick come to the hotel to get you people or did you go over to his place and see him?

"A. I was sitting on a bench, whether it was in front of the hotel or where it was, I don't know, but Mr. Remick came along and he looked down at my shoes, and he said, 'You have been stopping down at the Sulphur Springs, haven't you?' and I said 'Yes'; I had the dirt all over my shoes; and he said, 'I see that red dirt there,' and that opened [736]

(Testimony of Robert C. Taylor.)

the conversation, and then we were talking about Chico and a few conditions down there—but what conversation took place in particular I don't remember. From Taylorville we went to Susanville and filed on the land. I believe it was Mr. Aid's rig. It was the same rig that we went to Taylorville in and was driven by John Aid. We arrived at Susanville at night and the next day we went over to the Land Office and filed on the land that we had looked at, the description of which was furnished to us by Mr. Remick. After we had filed on the land we all returned to Chico in the same rig. When I made my final proof in the Susanville Land Office I went from Chico to Susanville by way of Reno and the Narrow Gauge road and stage together. We went around from Sacramento over to Reno and then by stage from Hot Springs to Susanville. I did not meet any other members of our party at Susanville when I first arrived, but John L. Gray, one of my witnesses came I think the next day or the second day after I got there. He came in a horse conveyance over the mountains but I do not know whose rig it was or anything about that. John Aid, Mr. Moore and Mr. Butler were in Susanville at the time.

"Q. You went to the Land Office and made final proof? A. Yes.

"Q. And paid the Government the $400 that the Government demanded for the land? A. Yes.

"Q. Where did you get the $400 you paid that with? A. I took it from Chico with me." [737]

It was not in gold coin; I had part of the money

(Testimony of Robert C. Taylor.)

in paper but while in Susanville I went around to three or four different places and made some small purchases and changed in each case, I would give a large greenback and get the change in gold and part silver.

"Q. Did you get any money at all while you were in Susanville? A. Yes.

"Q. Where did you get this money?

"A. It was on the table in the hotel, I think the Emerson Hotel; I am not sure.

"Q. Was this in a private room or was it in the lobby somewhere?

"A. Well, I think it was upstairs, but it was not—it might have been in a private room of some sort, it was a bedroom or something like that. I think a kind of reception-room.

"Q. Who was in the room at the time you got your money?

"A. Well, I don't know—there were several in there, but they passed into the other room; just when I came in they walked out or at least within a short time.

I do not remember my brother or John L. Gray was in the room at the same time. I do not remember anyone in particular. There were several in there.

"Q. Will you state exactly how the money was handed to you, or how you got the money?

"A. When I went into the room there was $412 laying on a little table, something like this, right on the corner, and someone made the remark, 'You

(Testimony of Robert C. Taylor.)

better put that in your pocket, Bob,' and I said, 'All right, I will,' so I put it in my pocket. [738]

"Q. Well, what did you suppose somebody was leaving $412 to put in your pocket for?

"A. I did not think anything about it then.

"Q. Did you give any note for it?

"A. No, not then.

"Q. Did you give any security at all for it?

"A. None at all.

"Q. Did you expect to pay it back?

"A. Well, I did not know but what I might have to pay it back. No one said that it belonged to them, there was nothing more said about it.

"Q. Did you see any other money besides that $412? A. Not a cent.

"Q. Did you see any money parcelled out to anybody else placed on the table—were there other stacks of money parcelled out there?

"A. No, not in my presence."

I do not remember that I spoke to anyone or that anyone spoke to me when I went into the room except whoever spoke to me about the money. I could not say whether I got this money before or after I went to the Land Office.

"Q. Do you remember whether you had your own money at the time you received this money?

"A. Yes, I had my own money in my pocket; I carried that from Chico.

I do not remember whether I had paid the Land Office for the land at the time. If I had been to the

(Testimony of Robert C. Taylor.)

Land Office I would have paid out my own money already.

The MASTER.—"Q. You said that you did not give a note at that time. Did you give a note at any other time for the money? [739]

"A. Well, I don't know what I signed afterwards; I signed a paper, but I don't know what it was.

Mr. PIER.—"Q. Up to this time had you at any time before that received any money? A. Yes.

"Q. How much? A. Fifty dollars.

"Q. Where did you receive that?

"A. I believe it was in Taylorville.

"Q. Who handed you that?

"A. Well, I don't know now.

"Q. What was said to you at the time that was handed to you?

"A. Well, whoever it was came up to me and said, 'You look honest' or 'you look good,' or something like that, and 'Perhaps you will want something to eat,' or words to that effect, it might not have been in just exactly those words, and handed me that bill.

"Q. A fifty-dollar bill?

"A. Yes, I am pretty sure it was a fifty-dollar bill.

"Q. What did you do with the fifty-dollar bill?

"A. I spent it for the food and accommodations.

"Q. For those who were with you?

"A. Those that were with me, yes.

That included the whole party of five that I have mentioned.

"Q. Did you give a note for that? A. No.

I did not expect to pay that back to the person

(Testimony of Robert C. Taylor.)

that gave it to me. I would have if they had demanded it [740] but I did not think anything about it then.

"Q. You did not say you would pay it back?

"No.

"Q. Did you expect to pay it back at the time you received it?

"A. I did not think anything about it right at that time

After we made final proof we returned to Chico I did not return by rail; I came back over the mountains with John Aid's rig by way of Prattville. There were several in the party. There might not have been only the ones that located the timber at that time. My brother, John L. Gray and Moore and Butler were in the party. When we came to Prattville we stopped at the Bunnell Hotel.

"Q. Did you get any more money at Prattville?

"A. Yes.

"Q. How much?

"A. I believe the exact amount was $100.

"Q. Did you get anything besides the $100, any money at all besides the $100 at Prattville?

"A. I don't think so.

"Q. Then what did you receive the $100 for?

"A. For, as I supposed, a loan or security on that property that I had just located.

"Q. Did you want to borrow money at that time?

"A. No, I did not ask to borrow any money.

"Q. You did not ask for any money, it was just tendered you, was it?

(Testimony of Robert C. Taylor.)

"A. Well, there was someone asked me if I would [741] sell my place, I said yes, I will sell it, and I think they asked me, I am not quite sure, but they asked me if it was worth over $100 or words to that effect and I said I didn't know that it was."

There might have been a little more conversation at that time but what it was I do not remember. I received $100 from Prattville in the rear of a store in the office of a notary public by the name of Costar.

"Q. When Costar gave it to you what was the conversation you had with him at that time?

"A. Mr. Costar didn't give me anything.

"Q. Who gave you the $100?

"A. I don't know who it was.

"Q. Was there somebody in there with Mr. Costar—was Mr. Costar in the room at the time you got the money?

"A. I don't think he was. I think he was in a little private office right off to one side, although I may be mistaken about that.

"Q. Do you know who the man was that handed you the money?

"A. I don't remember, I could not say who it was now.

"Q. Do you know George Tuman?

"A. I met him up there at that time.

"Q. You met him at Prattville at that time?

"A. Yes.

"Q. Was he the one that handed you the money?

"A. I don't know; he may have been, although I would not be positive of that. [742]

(Testimony of Robert C. Taylor.)

"Q. Would you be certain whether or not Mr. Costar handed you the money?

"A. No, I would not be certain of that either.

"Q. Do you know whether or not the money was handed to you by an individual or did you find it like you found the money at the Emerson Hotel?

"A. The money was handed to me.

Five twenty-dollar gold pieces. At the time this money was handed me I was asked to sign papers by the same party, whoever it was.

"Q. Did he have the papers all made out or did he have one made at that time by anyone?

"A. He had to have part of it made out.

I was waiting I think some three or four minutes while they done some writing. I am not sure who did the writing, whether it was the notary public or not.

"Q. Did you sign this paper before the notary public? A. Yes."

I think there were two persons there in that end of the building when I signed the paper. I am not sure, it is ten years since I have been in Prattville. My memory is not quite clear on that subject. There were quite a number in the other part of the store around the stove, I remember that. I do not think there were more than two besides myself present when I signed the papers.

"Q. Was anything said about the $50 that you had been advanced before?

"A. No, not that I remember of.

"Q. Was there anything said about the $400 that

(Testimony of Robert C. Taylor.)

you had gotten at the Emerson Hotel? A. No.

[743]

"Q. Did you know what this paper was that you signed?

"A. No, I could not say that I did. I started to read it and someone called to me to hurry up, that they wanted to get over the mountains before it snowed too heavy."

I do not know whether it was a note or a mortgage or a deed but I thought afterwards it must have been a quitclaim to the timber land. I could not say at the time I signed the paper that I knew I was signing the deed, but coming down I thought so.

"Q. You mean after you left Prattville and before you got to Chico you came to that conclusion?

"A. Yes.

"Q. What caused you to come to that conclusion?

"A. Well, I don't know, just conversation that came up between the five that were in the wagon.

I was satisfied that if it were a deed to the land to let the thing stand as it was as I did not think it was worth $100 and I do not think so now either.

"Q. Did you get your expenses paid for your trip from Chico to Susanville?

"A. Yes, my expenses were all refunded to me.

"Q. When were those expenses refunded to you?

"A. Well now, it might have been, and I think it was, in Chico, although I would not be positive of that.

I do not remember whether or not it was after I

(Testimony of Robert C. Taylor.)

had signed this paper at Prattville, it might have been in Susanville.

"Q. Did you pay Mr. Remick anything for showing you the land? A. No. [744]

"Q. Did you pay anything for the publication notice?

"A. No, I sent for the expense account of the paper and they—I wrote for myself, my brothers and J. L. Aid's advertisement—and they sent me the bill for the three but at that time I was pretty short of money, I was figuring on using my money for something else, and I let it go, and I never heard anything more about it.

"Q. When you signed that deed, did you expect then to ever pay the publication notice if the bill had been sent to you?

"A. I expected to settle every account that was against me.

"Q. When you disposed of the land did you figure on getting that amount as a part of the pay for the land?

"A. I never thought anything about it at all then.

"Q. Who refunded the expense to you for going around by Reno? A. John Aid."

I do not remember that anything was ever said to me about how I expended the $50 that had been handed me. There might have been but I don't remember. I do not remember how it happened that Mr. Remick located me on the land. Mr. Aid said that a man living there would show us the timber, he said that he knew every foot of that country.

(Testimony of Robert C. Taylor.)

At the time I started out to take up this timber land I thought if it was worth while or worth anything at all that I could hold it and make a good piece of money out of it. Timber land around that country at that time was selling at from $10 to $12.50 an acre, as near as I knew the value of [745] timber land. After I looked at the timber land it had been pretty well culled over at that time, and the piece I got was laid out in a very crooked shape and I thought to myself if I could get anything above my expenses on this land I would let it go as quick as I could.

"Q. Did you figure that the land was worth the expenses?

"A. Well, I figured that I might get a little something out of it at that time above what it would cost me.

"Q. Weren't you pretty sure you would get something out of it at that time?

"A. No, I was not sure of that.

"Q. What did you take it up for then?

"A. Well, I understood your question to mean directly, or immediately.

"Q. Well, that is what I meant. What did you take it up for if you didn't expect to get something out of it?

"A. Well, I expected to sell it, certainly, but I did not expect to sell it within a day or two after making final proof.

"Q. Were you in such position that you could put out $500 and let it lay there until somebody came around and bought it?

(Testimony of Robert C. Taylor.)

"A. Why, I could. In those days I could raise $500 at any time, and I carried three or $400 in my pockets most of the time, and that was not drawing interest in any investment.

"Q. Did you figure that this piece of timber land was a good investment at that time? [746]

"A. Well, I thought after Mr. Remick showed me the land, I thought that I could sell it and get my money back with some little profit, that is nothing worth while to speak of but more than what it cost me; while I knew it was not worth much, at least I did not think it was worth a great deal.

"Q. Going back to the time when you had your first conversation with Mr. Aid when he came in, did you have any discussion with your brother at the time as to taking up the land?

"A. As to taking up the land, you say?

"Q. Yes.

"A. Well my brother and I were living together at that time, but whether we talked it over before then or not, I don't know, but we probably did that night, or right away, anyhow within a day, I guess —I don't remember that, I don't recall how long it was.

"Q. Did you pay Mr. Aid anything for his rig in taking you to Susanville and back?

"A. I gave Mr. Aid some money after we returned to Prattville the first time. I do not remember how much it was.

"Q. Did you pay him that out of your money or was it paid out of the $50?

(Testimony of Robert C. Taylor.)

"A. It might have been out of the $50; I don't remember about that. I know I went down to his house and handed him some money. *I know I went down to his house and handed him some money.* I did not have any understanding with Mr. Aid at the time I started out that I was to pay him for taking [747] me over there. He said he was going up there and he would take us along.

"Q. When you came back the second time to make final proof did you pay him anything for bringing you back that trip? A. No.

"Q Was there any understanding that you were to pay him anything for that? A. No.

"Q. Did you expect to pay him anything for hauling you to Susanville and back the first time?

"A. Well, I didn't think anything about that, but had he demanded it, I would have done so, he and I were friends, we lived together, that is not in the same house.

"Q. Was Aid going to Taylorville the reason that he should haul you people over there voluntarily?

"A. If I remember correctly, he said he had to go back up there.

"Q. Up to Taylorville? A. Up to Susanville.

"Q. Well, you went to Taylorville? A. Yes.

"Q. What was Mr. Aid going to Taylorville for that he would haul you over there?

"A. I think that is the time he said he would have to go back there, the first time he went there.

"Q. Then would he have to go to Susanville also, did he say that?

(Testimony of Robert C. Taylor.)

"A. I think that is where he said he had to go, to Susanville, though I would not be sure; it might have been that he said he had to go to Prattville too." [748]

He said he would take us over to Taylorville when we wanted to go there, that was where the timber was, that he had to go up there or was going there, something to that effect.

"Q. Did you have any conversation with him at all before you went back to Susanville the second time?

"A. I don't remember whether I ever saw him after that until I got to Susanville the second time; I don't recall that I did. I did not talk with him about the necessity of having my final proof witnesses over there in time.

My proof witnesses would have been either Elijah Taylor, Gray or Butler. I would have to have two of them. I talked with Gray the night before we went up. I asked him if he was going up, he said yes he was, he had to make proof on his timber land but he said he didn't know when he was going. I said, "We are going to-night, we are going to take the train so as to have plenty of time to get up there." I had been sick and I would not go over the mountains in a rig that time of year the way I felt.

"Q. Did you have any assurance when you started out, that Gray would be there as a proof witness?

"A. No; no positive proof of it.

"Q. Did you know whether or not Butler was going to be there or not?

(Testimony of Robert C. Taylor.)

I did not know anything about it; I did not know where he was even, I did not like the man anyway, and I did not want anything to do with him. I wanted John Gray as a proof witness as well as he wanted me. I didn't take him along in the train with me because it was as much to his interest as it was mine. I was [749] also his proof witness and I was going to get over there and if possible have the day of proof delayed until John would come. I do not know what arrangements he had made about going over to Susanville. It has been so long ago I can't remember these details, but it seems to me that there was a rig going over in a day or two, I would not be positive but I think he said that.

"Q. When you were paid your expenses for going around by Reno, how did it happen that John Aid paid you those expenses?

"A. I cannot tell you because I don't know.

"Q. Why should he have paid you those expenses?

"A. I could not tell you, I don't know why it was.

"Q. Did you tell him how much they were?

"A. Yes.

"Q. Did he come and ask you how much they were?

"A. I don't believe he did. I am sure he did not.

"Q. Well now, how did you happen to tell him how much they were?

"A. Well, I kept—I always keep an account of all my expenditures, and I said to John, 'Well it cost me $19 and something,' I said 'to go from here around to Susanville.' Of course we came to Sacramento,

(Testimony of Robert C. Taylor.)

came down to Sacramento the night before and stayed there at the hotel until the morning train went to Reno, and that cost us a little more by going that way, and in the course of the conversation, I don't know how it came up, only I made this statement to him that it cost that much for it, all of us—I believe it may have been I stated it was that much for each, my brother and I. 'Well,' he says, 'if you sold your timber or as you have sold your timber, that ought to have been included' or something like [750] that. I don't remember whether this was before or after we sold."

I do not know where I had this conversation with John Aid as to my expense in going around by Reno because John and I were together a great deal after that. We lived close together in Chico and I saw him most every day and when any little transaction took place of course I could not recall that. I was not surprised that he should haul all of us people over to Taylorville and to Susanville and back again without any word about compensating him for all that as I never paid any attention to it. I know in very many cases people will ride over the mountains with someone going over and nothing said about it.

"Q. I know, but he was the one that suggested your taking the trip, was he not?

"A. He told us about the timber and that he was going up there and we could go up with him.

I do not attach any particular significance to the fact that he made the suggestion about the timber claims and that we could go over with him.

(Testimony of Robert C. Taylor.)

"Q. Were you not surprised when that man walked up to you and handed you $50?

"A. Well, I might say that I was a little bit. It would surprise me now if he would do that now.

"Q. I should think it would. Did you see anybody in Taylorville besides your party that you knew on that first trip to Taylorville?

"A. I don't recall that there was a soul there that I knew, unless it might have been some prospector that I had known at some other time. [751]

I do not remember that I talked with anybody in Taylorville about taking up this timber land besides Remick. I think that most everyone there was talking about timber. That was about the substance of the conversation at that time but I do not remember that I talked about it to anyone.

"Q. In regard to this nineteen dollar expense, why did you tell John Aid about that?

"A. Why did I?

"Q. Yes, why did you tell him about that expense?

"A. Well, I don't know as there was any particular reason why I told him, only like I would tell any friend that I was with that it cost so much to go to a certain place."

I don't remember that this conversation took place at Prattville before I signed the piece of paper which the notary public handed me.

"Q. What did you think when Aid came and handed you the money for your expenses, that $19?

"A. That is a pretty hard question to answer, what I thought. I don't remember what I thought

(Testimony of Robert C. Taylor.)

about it then; I know I was mighty glad to get my expenses back and get that much more out of the land.

"Q. Did you expect to get that back?

"A. Well, no, I did not expect to get it back.

"Q. Were you surprised when it was handed to you? A. I expect I was, I don't remember.

I can't think where the payment was made, whether it was there or in Chico; of course it might have been in Susanville, I do not know.

"Q. About how long was this conversation that you had with John Aid in the saloon at the time he first came and spoke to you?

"A. About a minute. [752]

"Q. Did you leave the table while you were talking with him?

"A. Well, I don't think I did right at that time."

I do not remember that I had more than one conversation with Aid before we started to Taylorville. It seems to me like my brother talked to him and told me that we could get the timber claim up there if we wanted to take it. The first time he spoke to me he asked me if I had used my timber right, and I told him no; he said, 'There are a great many people locating timber up in Plumas County or in the high Sierra mountains, and it is not all taken yet, but it is going awful fast; or words to that effect. I think that was about all he said that evening. He did not say anything to me that night that I remember about taking us over to look at land. As I said a moment ago, I think my brother talked with me about going

(Testimony of Robert C. Taylor.)

over the mountains. I do not think that I talked with him at all after that. My idea when I took up this timber claim—of course, before I went I was in hopes I would get a good piece of timber and could make some money out of it by holding it a while, but after I got up there and saw what I could get, I was glad enough to get rid of it at any price.

"Q. You were glad to get rid of it at any price at all? A. Yes.

"Q. What did you mean by that?

"A. Well, I would be glad to get more than my expenses and just anything to pay for the trip going up there.

"Q. You were not under any expenses that far, were you—you had not had any expense up to that time?

"A. No, there would be the cost we had of buying the land.

"Q. Why should you go ahead if you had a poor piece [753] of timber and take up the timber land, if the timber would hardly be worth the cost of taking it up?

"A. The way timber land was going, of course every sugar pine tree was worth so much money, and I think, if I am not mistaken that Mr. Remick and I looked at the timber and even made an estimate of about how many trees there was on an acre of ground there. It seems to me that we done something of that sort."

At that time I could not say that I had any experience in figuring out how much timber there

(Testimony of Robert C. Taylor.)

would be in a tree. I had worked around mills and had seen a great many logs brought in and heard fellows say about how much there was in each log, that is all I know about it.

"Q. Do you remember how your timber land lay?

"A. Well, if I was on the ground I believe I could find the different parts of it, although it laid in a very zig zag shape."

I should judge we were out on the timber land four or five hours; we went out in the morning and back the same night and in that time all five of us looked at our locations. I did not stay all of that time on my own claim or figure the stumpage value of the timber in 40's. We were just counting how many trees would be valuable for timber, making an estimate of how much there was on each acre, that is as near as I remember anything about that. It would depend on their size how many trees it would take to the acre to be considered good timber land. Most of the trees on this land were a very good size for sawlogs and I would judge there was about seven or eight trees to the acre, good milling timber. [754]

The timber was good size although it was not large. It was not near as large as it was lower down in the valley and it is a much harder place to get timber out of to log.

"Q. After figuring out, Mr. Taylor, that this was poor timber land, and you would be lucky to get your money out of it with a little interest, why did you go ahead and prove up on the land and put your $400 into it—you were not under any obligation to pay

(Testimony of Robert C. Taylor.)

$400 for the land, were you? A. No."

We made a count of about how many trees there was to the acre and I said, "Well I guess it is worth that money anyway," I would take it. I remember making the remark at that time that I was going to build a shingle-mill up there.

"Q. You are going to build a shingle-mill?

"A. Yes.

"Q. On your 160 acres? A. Yes.

"Q. You figured there was enough up there to make shingles on that 160?

"A. Well, there is some cedar around there."

It would not cost very much to put up a small mill. They hauled out from all around that district to the home timber market, what little sale they have—of course I never considered that nor I didn't consider doing it at the time.

Cross-examination.

Mr. SHURTLEFF.—"Q. Mr. Taylor, this happened about ten years ago?

"A. Yes, about that. [755]

"Q. The things touching which you have been testifying your memory, how is that—do you remember these matters clearly? Is your memory good as to all these matters?

"A. No, it is not. I have had the malarial fever so many years that my memory is not so good as it ought to be.

At the time I talked with Mr. Aid in Chico prior to going up to Taylorville and meeting Mr. Remick and going from there to the land, there was nothing

(Testimony of Robert C. Taylor.)

said between Mr. Aid and myself about selling the land any more than Aid said no one would have any trouble about selling the land if they wanted to.

"Q. Did you make any promise or agreement with anyone to sell your land prior to your going up and looking at it? A. Absolutely none at all.

"Q. You never did with any person prior to your filing your initial application? A. No."

I expected to use my own money which I took with me to pay for the land. When I finally conveyed the land I received sufficient money to reimburse me for all the expenses and $100.

The MASTER.—"Q. I thought you said you got five twenty-dollar gold pieces? A. I said $100.

The MASTER.—"He did not receive his expense money at that time.

Mr. SHURTLEFF.—"That was after; but I meant to embrace in the question that he was, without regard to the time, when he was through with the transaction, he had out of the land, he had received his expense money including, as [756] he has testified the money that he paid in the Land Office for the land, expense and $100.

"A. That was the way I understood your question, including everything.

Redirect Examination.

Mr. PIER.—"Q. What was the purchase price you got for your land, Mr. Taylor?

"A. Well, I got over and above my expenses just $100, or $102 or $103, I don't know what it was; I think there was a little something over, because I

(Testimony of Robert C. Taylor.)

had something like two or three or four dollars, I don't remember what it was, out of that fifty dollar bill that was not spent, that fifty-dollar bill.

I do not remember that I got any money from John Aid after I left Prattville and before I got to Chico on the last trip. I might have got a couple of dollars or so but I don't remember.

"Q. Now, how do you figure that you got $100 over and above your expenses, Mr. Taylor?

"A. Well, the cost of the timber and office expenses were $412; all my expenses were eventually returned to me, besides $100 which I received."

I did not pay any taxes on this land after I got my $100 at Prattville. I was expecting a deed for two or three years, I didn't know how long it took a deed to come.

"Q. You were expecting a deed to be recorded for two or three years?

"A. No, I was expecting a deed from the Government.

"Q. A patent. You never paid any attention to this land as a matter of fact after you got your $100, did you? [757]

"A. Oh, yes. I was wondering why the Government did not send me the deed to that land; I thought a good many times that they were awfully slow in taking action on a thing like that; and then someone, or possibly I read it in the papers, I don't know, showed me where a great many land cases were in court, where they were trying to recover

(Testimony of Robert C. Taylor.)

the land which had been located and turn it back to the Government.

"Q. Do you know what became of your patent?

"A. No, I don't know anything about it.

At the time I paid $400 to the receiver in the Land Office he may have given me a receipt. I know he gave me something, some kind of a paper, but I do not know what became of it. I may have delivered it to somebody at Prattville at the time I signed this paper although I do not remember. I do not remember whether I delivered it to somebody before I left Susanville. I do not remember what became of that paper. I remember now that there was a receipt from the Land Office for the amount of money, $412. I do not know what became of it. I have never thought of it from that day to this that I know of. [758]

Testimony of John Lewis Gray, for Complainant.

JOHN LEWIS GRAY, called as a witness for complainaint, testified as follows:

My name is John Lewis Gray; am 50 years of age and reside at Chico, California. My occupation at the present time is that of shoe cobbler. In 1901-02-03 I was a common laborer. I remember making a timber entry for lands in Plumas County somewhere about 1902. I do not remember the exact date.

"Q. For the purpose of the record I will state that you filed on the 15th of September, 1902, and that was done at Susanville, California. Will you

(Testimony of John Lewis Gray.)

tell now in your own words, Mr. Gray, how you came to make this entry?

"A. Well, I will tell you just as near as I can remember."

In the first place I had been with a couple of other boys over to Surprise Valley and then we came back by way of Susanville and Prattville to Chico, and one of the boys, Elijah Taylor, spoke about going and taking up timber land, which I agreed to do and I went with the crowd. Elijah Taylor said there was a party going to take up some land and asked if I would like to go along. There was nothing said at that time about what I would do with the land when I got it. We went direct from Chico to Taylorville and then went out to look at the timber land.

"Q. When you got to Taylorville did you meet anyone there? A. Yes.

I did not know the man then but I was under the impression that it was Mr. Remick and he took us out and showed us some of this timber land. There were in the party besides [759] myself, Bob Taylor, Elijah Taylor, a man by the name of Moore, a man by the name of Aid and C. H. Butler. Those were all the members of the party with the exception of the driver and I do not know whether he took up land or not. His name was Aid. I do not know whether it was John Aid or not.

"Q. Now, this man Aid that you speak about that was in the party. Is that the Aid you have reference to? A. No, the father.

(Testimony of John Lewis Gray.)

"Q. The father was in the party, was he?

"A. Yes."

We had two rigs. This man Butler had a rig and took it along and drove it himself. There were six, I believe, in our rig. I am not sure that Butler was alone in his rig, but those that I have mentioned composed the crowd. After we went to Taylorville and looked at the land I can't tell you whether we came back home or went to Susanville, but I rather think we went to Susanville, and filed on the land.

"Q. Now, you knew at the time you were at Susanville to file on the land that you would have to pay the Government for the land, did you not?

"A. Yes.

"Q. You knew how much you would have to pay, did you not?

"A. Well, we supposed, understood it was supposed to be in the neighborhood of $400, or somewhere in that neighborhood.

"Q. Did you have $400 at that time to pay for the land?

"A. I had $400 but I did not have it with me.

The MASTER.—"Q. You did not have to have it [760] with you at that time? A. No.

Mr. PIER.—"Q. Did you expect to use your own money to pay for the land?

"A. Not at that time, I did not.

"Q. At the time you first went to Susanville?

"A. No.

(Testimony of John Lewis Gray.)

"Q. Where did you expect to get the money to pay for the land?

"A. I expected the money would come from some other source, that was the understanding."

Nobody told me it was coming from some other source.

"Q. Didn't you pay your own expenses on that trip? A. No.

"Q. Do you know who paid them?

"A. I know who paid them; yes.

"Q. Who paid them?

"A. A fellow by the name of Robert Taylor.

"Q. When you started out did you expect to pay your expenses? A. No."

Before we started out Elijah Taylor asked me if I would like to go on that trip, said the expenses would be paid. I do not know where he got the information. He did not say anything about what I would get for the land or about what I would do with the land when I got it. I had an idea what I would do with the land. I didn't just know who, I didn't go with the intention of keeping the land. [761]

The MASTER.—"Q. You expected to sell it to somebody? A. I did.

Mr. PIER.—"Q. Did you have any idea at all as to where the purchaser was coming from—the person who was going to purchase it was coming from? A. Not at that time, I did not."

There was nothing said about where the $400 to pay the Government for the land was coming from as near as I can remember, but we supposed

(Testimony of John Lewis Gray.)

it would be furnished and if the money would not be furnished I did not expect to go ahead with it. My Taylor did not say that he could make arrangements for getting the money. He talked very little about it. We simply went up and made the location and came back. I did not pay any expenses on the trip when I went to file on the land and I am not sure about the expenses on the second trip. I think I paid some of the expenses in the latter part of the trip.

"Q. Were you ever reimbursed for those expenses? A. No, not the last part of it.

"Q. Where did you get the $400 with which you paid for the land?

"A. I got that, I believe, in Susanville.

"Q. Where did you get it?

"A. Well, I got it in a room, I believe it was in—I can't remember the name of the hotel.

The MASTER.—"Q. The Emerson Hotel.

"A. I believe it was the Emerson Hotel.

Mr. PIER.—"Q. Do you know who gave it to you? A. No, I do not. [762]

"Q. Was it any of the people in your party that handed you the money? A. No."

I will tell you just as near as I can remember, that is the best I can do. The party of us were all in the room at one time and it seemed as though they all disappeared, one at a time, and when I got the money there was nobody in the room but myself and the money was on the table.

"Q. The money was on the table? A. Yes."

(Testimony of John Lewis Gray.)

I could not say that anyone indicated that that money was for me. I cannot remember. I supposed it was for me.

The MASTER.—"Q. Who was in the room there at the beginning of the proceeding?

"A. Well, there was these six men that I have mentioned, Bob and Elijah Taylor, John Aid, and John Moore and Butler.

"Q. You were all there? A. Yes.

I do not remember what conversation we had.

"Q. Then what happened?

"A. Well, it seems to me as though all disappeared but me and the money was there.

As near as I can remember it they all went out and I saw the $400 on the table. I cannot remember now as well as I did at that time because I had a fall since that time, that is as near as I can get at it. I am satisfied that there was no one in the room outside of our party when [763] the meeting began and I have no idea who put the money on the table. I do not think it was anyone's room. It seems to me as though, as I remember it, it was not a bedroom or anything of that kind, it was kind of an entertaining or reception room.

The MASTER.—"Q. Who drove the team over from Chico that time?

"A. I don't know whether I have the right name or not, John Aid.

"Q. The old man that went out? (Jacob Aid.)

"A. No, it was his son that drove the team.

"Q. Was he in the room at the beginning?

(Testimony of John Lewis Gray.)

"A. He was in the room with us."

I don't know whether he took up land at the same time that I did or not, he was with us in the party.

"Q. What did you do with the $400 that you found there?

"A. I took it to the land office.

Mr. PIER.—"Q. Now, what did you do with the land after you got it, do you remember—did you sell it? A. It was transferred.

"Q. You transferred it; do you remember who you transferred it to? A. No.

"Q. You transferred it to Charles E. Gregory. Do you remember the circumstances under which you executed that deed?

"A. Well, yes, I remember that fairly well, I might not state it just exactly as it was, but I remember it fairly well." [764]

We went into either a store or sort of a business place, I think it was a business place in Prattville, when we were on our way back from Susanville after we had made final proof. As near as I can remember it was what was called the Bunnell place in Prattville. It was not the Bunnell Hotel. He stayed there but it was a little place just this side of Bunnell's on the way home. It was not at Bunnell's Hotel near the bridge over the river there. We stopped there over night, but the place I mean —I can't remember the man's name, where this transfer was made. I think it was a general store as near as I can remember it where I executed the deed.

(Testimony of John Lewis Gray.)

"Q. Who did you give it to?

"A. I could not tell you.

"Q. Who was with you at the time?

"A. Nobody, nobody in the room but me and the notary public, and I cannot tell you who he was.

"Q. Who did you give the deed to?

"A. I left it there—it was left in the office of the notary."

The rest of the party that were coming back from Susanville were hanging around in another part of the store as I remember and as far as I know, they executed their deeds at that time, but I cannot tell you because I do not know. I was in there alone with the notary.

"Q. Who told you to go in there with the notary?

"A. Well, they were all going in, and I took my turn with them."

I don't know as anybody told me to go in. It was [765] supposed that the business of transferring the land was to be done in that place as near as I can get at it. I cannot remember that anyone told me that I was to execute a deed for the land at Prattville. When I came to the room or office where the notary public did his work, I went in there and signed a paper.

"Q. Where did you get the deed that you executed?

"A. I got the papers that I turned over in Susanville from the Land Office."

Whatever papers I got were transferred there, whatever it was, I could not tell you what it was.

(Testimony of John Lewis Gray.)

The MASTER.—"Q. What we are talking about is the deed, not your final certificate which the Received gave you when you gave him $400. Who gave you the deed that conveyed the land away from you, that you finally signed there in Prattville, where did you get that?

"A. Well, sir, I cannot remember, I cannot tell you.

I know the paper I got in the Land Office I left in the notary's office. I believe I signed some papers in the notary's office.

"Q. Is that your signature, Mr. Gray?

"A. Yes.

"Q. I am showing you a deed from John Lewis Gray to Charles E. Gregory? A. Yes.

Now that I see the signature I remember the circumstances which I signed that paper, but I do not remember where I got this deed. I took very little interest in it.

Mr. PIER.—"It was acknowledged at State of California, County of Plumas, Robert A. Costar, Notary Public in [766] and for the County of Plumas, State of California,—it does not give the exact place of executing the deed.

When I went into the notary's office and signed this deed I left all the papers there.

"Q. Where did you get your money for the land?

"A. I got it right in there on the desk.

The MASTER.—"Q. What desk do you refer to now? A. In that little store.

I cannot say whether the notary was in the office

(Testimony of John Lewis Gray.)

where the money was left or not. I rather think it was done the same as this other one.

"Q. Did you go to the notary at the same time, all of you, or one at a time?

"A. One at a time.

The MASTER.—"Q. How much money was it?

"A. $100.

When I left Chico I went to Taylorville and on to look at the land. I believe that I was shown the land by Mr. Remick, the gentleman sitting there at your right.

"Q. Was it this gentleman, Mr. Ned Remick?

"A. Yes.

"Q. Did you pay Mr. Remick anything for showing you that land? A. No.

"Q. Did you expect to pay him anything for showing you the land? A. No."

When I got the $400 at Susanville, I did not expect to pay the money back to anybody. I did not give any note for it and I did not sign anything at all until I [767] got to the land office.

"Q. You say you signed everything in the Land Office?

"A. I say I did not sign anything till I got to the Land Office.

I paid very little attention to the particulars of making this entry. I was very little interested in the whole proceedings. I do not know that I can tell you why I did not take any particular interest.

"Q. Did you think that you were taking up the land for yourself?

(Testimony of John Lewis Gray.)

"A. Well, I tell you, I did not expect to make use of the land.

"Q. Did you expect to hold it for any length of time at all? A. No."

At the time I started out to make this entry I expected to dispose of it as soon as I had acquired title. I never had any idea of taking up timber until Elijah Taylor came and talked with me about it. It had never entered my mind. I would have taken up timber land at that time and invested $400 of my own money in it if I had thought that it was a good investment, but I would not have gone down in my pocket and taken $400 and put it in that land at that time.

"Q. You would not? A. No.

"Q. Now, Mr. Gray, you said a few minutes ago that you had a fall, how long ago was that?

"A. That was about four years ago. I fell from a tram-way of the Sierra Lumber Co. [768]

I was carried home and I did not know anything only at times for probably two or three minutes for a day and a half, and then I was in bed for about three weeks. I fell on my head. I do not remember that there was an allowance made for my expenses on my last trip from Chico to Susanville. I understood the expenses would be paid, but did not know where the allowance was coming from. On the way back, I think it was in Prattville, that is where the party was supposed to disband, there were a few dollars given me as my share of the

(Testimony of John Lewis Gray.)

expense money that had not been expended on the trip.

"Q. Who handed that to you?

"A. Bob Taylor."

Cross-examination.

Mr. SHURTLEFF.—Mr. Gray, I have only a few questions to ask you: You say the $400 that you received at Susanville to be used in payment for your land, that you did not expect to return it. What was the total price that you had received for your land?

"A. I don't remember just exactly what it was."

I think I received a little more than $400.

"Q. For instance, if you paid the Government $400 you would expect to be returned that $400, would you not? If you had paid it out of your money, you would expect to have that back, would you not?

"A. Did I make that statement—I don't know that I did.

"Q. I do not think you understand me. You did not make that statement. You said that the $400 that you received [769] at the hotel, you did not expect to return it to the person who gave it to you, or from whom you received it?

"A. I did not.

I expected to use it in the Land Office paying for the land. After I received my final certificate I deeded the land, and received, as far as I can recollect, $100.

(Testimony of John Lewis Gray.)

"Q. And the $400 was on account of the payment to the Government?

"A. That was $400 that was to settle for the land."

Redirect Examination.

When I sold the land I did not figure that I paid $400 for the land, and so much money for expenses and then so much for profit as I did not understand it that way. There was so much money left for me and I used it. It might have been a few dollars over $400 or a few less, I supposed that money should be used and I used it. When I sold the land I executed a deed and got the money at Prattville. In settling up my expenses had all been paid up to the time that I got back to Prattville.

"Q. And you did not expend anything out of your own pocket for these expenses? A. No."

I cannot say whether I paid a publication fee or not, whether it was paid out of my money. It seemed to me there was something of that kind, but I could not make a statement.

"Q. Do you know whether you paid that out of your money or whether that was paid out of the expense money?

"A. I don't think that I paid it at all, as near as I can remember. [770]

When I came to Prattville after making my final proof, I had not been out personally any money for expenses and they paid me $100 for the deed.

The MASTER,—"Q. Who paid you the $100?

(Testimony of John Lewis Gray.)

"A. I don't know who.

Mr. PIER.—"Q. It was paid to you there in Mr. Costar's office? A. It was left there on the table.

"Q. You remember taking it off the desk in Costar's office? A. I remember getting the $100.

[771]

Testimony of John Van Ornum, for Complainant.

JOHN VAN ORNUM, called as a witness for complainant, testified as follows:

I am 43 years old and reside at Magalia. In 1902 I resided in Chico. My occupation is that of a Stationary Engineer. In 1902 I was working on a hay-press. I took up some land in Plumas County in 1902. At that time I was living in Chico. I went out to look at the land with a party composed of Mr. Hensley, Mr. Atterbury, Mr. Parker, and I think, Mr. Jental. There was a fellow over there that showed us the land. I don't remember what his name was, though. It took us two days to make the trip. The land was located between seven and nine miles the other side of Buck's ranch. After looking at the land we went back to Oroville and then to Marysville the next morning to file on the land. After filing on the land we returned to Chico. When it came time to make final proof I made final proof in Marysville. On the second trip I paid the Land Office at Marysville four hundred twenty and some odd dollars. I got the $400 in Marysville at the United States Hotel. It was upstairs in a room. Mr. Atterbury

(Testimony of John Van Ornum.)

and Mr. Hensley and myself were present. John Aid brought the money into the room.

"Q. What did he do with the money that he brought into the room?

"A. He put it on the table.

"Q. Did you divide it up, or did he put it on the [772] table in a pile?

"A. He divided it up.

"Q. The amount that should go to each person he separated out, did he? A. Yes.

"Q. Did he say anything then as to what the money was for? A. No.

"Q. What did he say after he put the money on the table, or before he put the money on the table; do you remember anything?

"A. He said he was going to get the money and he would fetch it up."

"Q. Let me ask you this: Just state if you ever had any conversation with Mr. Aid before this conversation in which he gave you the money about taking up the timber land?

"A. Oh, yes, we had talked about it.

"Q. You had had a talk about it?

"A. Yes."

We had our first talk with Mr. Aid three or four weeks before we went over to Plumas to look at the land. That conversation was in the Chico Hotel. Tom Hensley, Mr. Atterbury, John Aid and myself were present, and there were three or four others—Herman Parker was there. At that time Mr. Aid told us we could go up there and buy the

(Testimony of John Van Ornum.)

land and sell it and get $100 out of it. Besides that he also told us that all our expenses would be paid. At that time I told him I would see him afterwards. [773] When I saw him afterwards I told him I would go over. This talk we had when I told him I would go over, was before I went over to Plumas.

"Q. What did you mean by that proposition; you say 'I would go over'; what did you understand that you meant by that?

"A. Go over to Plumas.

"Q. And what would you do there?

"A. Buy land; look at the land.

"Q. Go over and look at the land and take it up just as you did? A. Yes.

Mr. SHURTLEFF.—"Now, your Honor, he says, 'take it up just as he did.'

The MASTER.—"I would understand that answer to mean that he accepted the proposition; he has said what the proposition was that was made to him when he says, 'I will go over,' I understand that to mean that he accepted the proposition and all that implied.

Mr. PIER.—"That is all I am after."

On this trip to Plumas to look at the land and on the return trip, all my expenses were paid; I didn't pay them out of my own pocket. When I first made the first trip to Marysville my expenses were all paid. On the second trip to Marysville to prove up on the land my expenses were all paid. When I was in Marysville the Marysville Land Office is-

(Testimony of John Van Ornum.)

sued me a certificate or receipt for the money I paid. I turned it over to Aid when I signed the deed. I signed the deed and turned over the certificate in Chico in Charles [774] Stillson's office,

"Q. Did you ever receive anything on account of it?

"A. I got $40 in the morning, and I got $60 that afternoon.

The $40 was paid me before I signed the deed, and the $60 was paid afterwards. John Aid paid me both the $40 and the $60.

Cross-examination.

Mr. SHURTLEFF.—"Q. In this first conversation that you had with John Aid, did he come to you or did you go to him?

"A. I met him on the street."

When I met him on the street he was telling me about the timber land. He said if I would go over and buy up 160 acres I would get 100 and my expenses paid if I wanted to sell it. Prior to his making that remark there had not been any talk about timber land with Aid. The first time I talked with him I gave him no answer. The next time I met him he asked me if I was going over with him, and I said I thought I would, and he said to be ready the next day. Then I told him "All right," and I was ready the next morning.

"Q. Did you, at that time, or at any conversation prior to that, promise to deed him the land when you got it? A. Not for sure.

"Q. What do you mean by the words 'for sure'?"

(Testimony of John Van Ornum.)

"A. I did not say that I would.

"Q. Did he say anything to you at that time, [775] ask you to deed it to him or to someone that he might designate when you got it?

"A. Why, I could not say as to that, whether he did or not.

"Q. Did you feel in your own conscience that you were obligated to convey this land to Mr. Aid or some person he might designate? A. Yes.

"Q. You did? A. Yes.

"Q. And that was the result of this conversation that you had the first time before you looked at the land? A. Yes.

"Q. I am showing you a certified copy of your application to take up this land. Just take it and glance over it. In the first place I will ask you if that is a photograph of your signature?

"A. I think it is.

"Q. Now, just read that over; is that your signature to that affidavit? A. Yes.

"Q. I will read to you this portion of it: 'that I do not apply to purchase the land above described on speculation, but in good faith to appropriate it to my own exclusive use and benefit, and that I have not, directly or indirectly, made any agreement or contract, or in any way or manner, with any person or persons whomsoever, by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit of any [776] person except myself.' 'Sworn to before Henry Mallock, Receiver.' When

(Testimony of John Van Ornum.)

you made that statement, was that correct?

"A. Yes.

"Q. Now, Mr. Van Ornum, you have testified here that you felt that you were under obligation by reason of the conversation that you had with Mr. Aid to sell that property to him or to some person whom he might direct; that you had virtually made a contract there; that is the only conclusion that his Honor could draw from your conversation with Mr. Aid, that you had made a contract to take up this land and sell it to Mr. Aid for $100 and your expenses?

"A. I got the money for my own benefit.

"Q. But you said that you had made no contract to convey?

The MASTER.—"Read the latter part of it to him.

Mr. SHURTLEFF.—"Q. 'I have not directly or indirectly, made any agreement or contract, or in any way or manner, with any person or persons whomsoever, by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except myself.'

The MASTER.—"Q. If you think that was a true statement at that time, Mr. Van Ornum, you are entitled to say so, and make any explanation of it that you desire.

"A. I thought it was a true statement at that time. There was a supposition that I was to sell the land, but I had not made any contract to sell that land.

(Testimony of John Van Ornum.)

"Q. Then you mean by what you have said just now, that you were not bound to sell the land?

"A. No, I was not. [777]

"Q. Then you mean by what you have said just now, that you were not bound to sell the land?

"A. No, I was not.

"Q. Of course, that is what we mean by obligation, a thing that binds. Now, when you say therefore, you think you were under obligations, do you mean by that it would not have been fair to him not to—is that what you have in your mind?

"A. Yes.

"Q. I understand the witness to say that while he had not made a regular contract, that he felt under a moral obligation. Is that what your idea is? A. Yes."

When I came to prove up I went to the Land Office the second time.

"Q. Do you remember being asked this question by the Land Office and giving the following answer: 'What do you expect to do with this land and the lumber on it when you get title to it?' 'I expect to hold it.'

"A. Well, I expected to hold it to sell it.

The MASTER.—"That was when, the final proof?

Mr. SHURTLEFF.—"Final proof, yes, your Honor.

"Q. Did you pay out of your own individual funds all the expenses in connection with making this filing, and do you expect to pay for the land with our own money? A. Yes.'

(Testimony of John Van Ornum.)

"A. I said that the money I considered was my money.

"Q. Question 17 is: 'Where did you get the money with which to pay for this land, and how long have you had same in your actual possession? I earned it. Some of it [778] I have had for over two months and the balance I got this morning; it was money due me.' A. Yes, I did, too.

"Q. How was it due you?

"A. I was supposed to get that money; it was due me virtually on the supposition.

The MASTER.—"Q. After that first conversation with Mr. Aid, Mr. Van Ornum, before you filed, did you make any subsequent deal with him or anybody else, between the filing and the final proof, to sell the land? A. Well, we talked it over.

"Q. You and Aid?' A. Yes."

I first learned about this particular tract and that it would be a good investment from John Cantwell. He was the first one who spoke about it. He was telling me about going over there and buying up the land, and that he thought it would be a good investment.

The MASTER.—"Q. Did he say anything about Aid?

"A. Not then. When I met Aid he told me about it, too."

I didn't know George Tuman. I don't know as I ever saw J. E. Remick. I didn't know him at that time. I didn't know Arthur Elam. I know Jack Heppe. I have known him about 17 years.

(Testimony of John Van Ornum.)

I didn't talk to him about this at all, prior to the taking up of the land. I didn't know Charles H. Holbrook, Sr., or Charles H. Holbrook, Jr., or T. D. or E. S. Collins, or J. G. or D. G. Curtis. After taking up this land I have not seen any of these papers that Mr. Shurtleff has read to me until I heard them this morning. [779]

Redirect Examination.

Prior to this morning I never told anyone where I actually got the money.

"Q. Now, you stated that when you received the pay, this $400 that you considered this your own money, this $400? A. Yes.

"Q. Will you just explain why you considered it your $400?

"A. Well, on account of they were to furnish; it was due me that way.

"Q. When was that conversation had, that they were to furnish the money?

"A. Before I went over to Plumas County.

"Q. And you considered that as your own money and as money that was due you on account of the conversation you had in the first place with Mr. Aid? A. Yes."

Recross-examination.

I considered it was due me because it was promised to be paid to me. I discussed that with Mr. Aid. At that time he promised to furnish me the money. I cannot recollect his language. He told me if I would go over and take up the land they would furnish everything; furnish the money to pay

(Testimony of T. D. Collins.)

for it and everything. That was before I took it up.

(Then follows chain of title from John Van Ornum to Charles E. Gregory and from Charles E. Gregory to the Curtis, Collins and Holbrook Company.) [780]

Testimony of T. D. Collins, for Defendants.

T. D. COLLINS, called as a witness for defendant, testified as follows:

My name is Truman D. Collins; age, 81; residence, Nebraska, Forest County, Pennsylvania; lumberman by occupation for the last thirty years. I have known Dan Curtis and his father J. G. Curtis I think for about 11 years. I first met C. H. Holbrook, Sr., at Warren, Warren County, Pennsylvania. He was introduced to me by Dan Curtis. I do not remember the month of the year. My recollection is it was in the latter part of the year. I had business transactions with Holbrook at that time. Dan Curtis came to me and he says there is a man by the name of Holbrook that has some land to sell in California. When he told me where they were I knew the character of the lands by the lands he spoke about and where they were located. He told me he had 42,000 acres of land to sell. Holbrook said he did not own an acre of it now but he had a cruise of the land and he had it for sale at $7.50 an acre on which he proposed to put railroad or forest reserve scrip which would cost him $5.50 an acre. The price finally agreed upon was $7.50 an acre. We entered into a

(Testimony of T. D. Collins.)

first contract dated Nov. 23, 1901. This was modified by a contract of December 19, 1901. I do not recall the circumstances of the different visits. I had a subsequent conversation with Holbrook about acquiring timber lands beyond the 42,000 acres. We had accumulated about this amount of land and he proposed he said that the scrip was hard to obtain and he said to acquire more land we would have to get it from the settlers, buy it from the settlers, that these lands were fast being taken up and he had to be quick. That that was the only way out and in doing that he said the settlers' rights were the best title we could get but I told Holbrook not to do that we want to know that those lands, the title to those was first-class and we don't want anything else but first-class titles. I remember that distinctly. I was sharp on that point. I always wanted first-class titles. [781] He said you will have them, they will be first-class titles right through and so we had that fixed up solid and he went on as I told you. That conversation took place after the purchase of the 42,000 acres was completed, or about that time, right in the ending of it. I could not fix the exact date. Subsequent to that time we had a further conversation about the price, raising the price from $7.50 to $10 an acre. At that conversation D. G. and J. G. Curtis were present, myself and Holbrook. I don't remember anyone else. J. G. Curtis and T. D. Collins were to pay the amount, $7.50 and $10 an acre for these so-called settlers' claims. Each of us got stock for the amount of money we paid.

(Testimony of T. D. Collins.)

"Q. Who paid the greater portion, you or J. G. Curtis? A. T. D. Collins.

I don't remember any other conversation. We went on to purchase these lands according to that talk.

"Q. Aside from this talk that you have stated and the contract that you have referred to, did you have any other independent talk or deal with him touching any other lands or did they cover all the lands that you had?

"A. They covered all the lands we ever got of him, of Holbrook. I have known Geo. E. Tuman from the time about we made that last deal with Holbrook. Holbrook told me at the time I first met him that Tuman had cruised the lands. That brought Tuman to my notice first, but I did not personally meet him until afterwards.

"Q. Do you know as to whether or not there were any business relations between Holbrook and Tuman of your own knowledge?

"A. Not any more than Holbrook employed him to cruise these lands and he was the cruiser. I got this information [782] from Holbrook himself. We did our business under the second contract. I do not know Mr. A. E. Head. I know C. H. Holbrook, Jr. I knew him through the whole transaction. I did not know him at the time I signed the contract but I mean during the work of accumulating these lands you understand, then I knew Charley Holbrook, Jr., but that was here in California; of course he was not present at Warren when we

(Testimony of T. D. Collins.)

made the first deal. I am the father of E. S. Collins. He was not present at Warren at the time we made these contracts. I have known J. E. Remick probably two or three years. I don't remember that I ever had any conversation with Mr. J. E. Remick touching the lands involved in these suits. I don't know A. W. Elam or any of the rest of the entrymen. I do not know Charles E. Gregory. I have heard of him. I have met L. A. Bunnell and L. W. Bunnell, but never talked with them about these lands at all.

"Q. Did you ever hear of him (Charles E. Gregory) in connection with these lands that are involved in this litigation, the stone and timber entries?

"A. It runs in my mind, yes, that the title went through Gregory, now I may be mistaken about that, but that is the way it runs through my mind; I know there was somebody the titles went through from Holbrook to the company. I don't know anything about Gregory personally. I can't explain how they came to take the title in the name of Gregory or a third person any more than this they said it had to be done in that way and to be held in that way in escrow until they were needed by the company. Then they were to be deeded to the company.

"Q. Who was to direct the deeding to the company?

"A. I don't know anything about that, that was the way of it; I don't know the reason why or how that was done at all, any more than it was to conform I suppose to the law, or something or the other about

(Testimony of T. D. Collins.)

it. I was away off in Pennsylvania; I was a long ways from here, but this thing was done, as long as it was legal that was all there was [783] to it; I supposed that everything was done that was legal, that is the only way for it to be done. I know what it means to record a deed. I don't know anything about the deeds being kept off the records at all. I know there were deeds put in there but that part of the thing I did not pay any attention to. I know about a timber and stone entry but I don't know but very little about it—the inside workings I do not know. I don't know anything about making final proof.

"Q. You paid for these lands prior to the patents did you not?

"A. Well, these lands were paid for when the claim was made good, that is all I know about it.

"Q. Did you have any conversation with Mr. Tuman or Mr. C. H. Holbrook, Sr., or Mr. C. H. Holbrook, Jr., or any other person or persons prior to say 1906 touching the manner and procedure followed in these different claims, these stone and timber claims?

"A. I don't think I did; I don't know anything about these things any more than this, that Mr. Holbrook was to give us a perfect title, and I had all the confidence in Mr. Holbrook in the world at that time.

"Q. Had you ever been told or heard of any agreement having been made with the entrymen by Mr. Tuman or Mr. Holbrook or any other person or persons?

"A. I don't know anything about this; I didn't

(Testimony of T. D. Collins.)

know an entryman in the whole business, a middleman, or anybody at all, any more than Mr. Holbrook acquired these titles, but I don't know anything about the manner of acquiring the titles. [784]

I don't know when I first learned the date that these titles were being questioned, whether it was before or after the earthquake of April, 1906. I purchased Mr. Holbrook's stock and both of the Curtises. At the time I purchased their stock I had not heard that any of these titles were questioned. It was just as clean and nice at that time as anything so far as I knew. I never discussed with any entrymen their entry, nor was I ever present when any discussion took place, with an entryman concerning his entry. I am the Collins referred to in the Curtis, Collins and Holbrook company. I don't remember the year that Curtis, Collins and Holbrook was organized. (With the consent of counsel for plaintiff, Mr. Shurtleff stated that the Curtis, Collins & Holbrook Company was organized August 15th, 1902.) The main holders of the company at the time it was organized were J. G. Curtis, T. D. Collins, C. H. Holbrook. There were several directors, Moulton of the bank was one, Don't know whether E. S. Collins was a director or not. Think Dan G. Curtis was a director but would not swear to it. Charley Holbrook, Jr., was a director. Think J. G. Curtis was president. Could not swear to it; I could not tell you who the president of the corporation is now.

"Q. You are the president, Mr. Collins, don't you remember that? You have been a director ever since

(Testimony of T. D. Collins.)

its incorporation, haven't you?

"A. Yes, that is right, I guess.

I might have attended a meeting, but I will tell you I attended very few; I have to come clear across the continent to attend them. So far as I knew they held very few meetings.

"Q. Do you remember either in the board of directors or when you were talking amongst yourselves as stockholders or directors or personally ever having had any conversation or ever having entered into any contract on behalf of the company, the Curtis, Collins and Holbrook Company, with Mr. Holbrook touching the purchasing of lands for the [785] company by him? A. No, not a bit; nothing.

Never had a conversation with Geo. E. Tuman authorizing him or touching the purchasing of lands by him for the company.

"Q. Who was the largest stockholder?

"A. T. D. Collins.

"Q. Who next? A. J. G. Curtis.

"Q. Just what fractional part as near as you can recall, has Mr. Holbrook held in the company, his largest holdings at any one time?

A. Probably one-fifth. No special agent or anyone representing themselves to be in the employ of the Government or anything of that kind ever interviewed me concerning the lands of the Curtis, Collins & Holbrook Company.

Cross-examination.

I have owned timber land in Forrest County, Pennsylvania, in the State of Washington, in California.

(Testimony of T. D. Collins.)

I have given my Washington holdings to my son E. S. Collins. The land may still stand of record in my name. The Collins family is extensively interested in timber land in California. The Curtis, Collins and Holbrook Company have about 80,000 acres. I have holdings in the Pennsylvania Lumber Co. I own considerable timber land myself individually in California.

"Q. Now, when you came to make this contract with Mr. Holbrook, this contract contemplated the forming of a corporation to hold the lands. How did that come about, who suggested that?

"A. Not me; I was opposed to it, always have been opposed to it; I do not believe in corporations at all. I believe in individuals and it did not come from me at all, [786] I always was opposed to corporations.

"Q. Do you know who did suggest it?

"A. I could not say; I know it did not come from T. D. Collins; I have always been opposed to it.

"Q. Do you know how it came about that Holbrook was to have an interest in the corporation?

"A. Why, it came about that he took stock in the corporation?

"Q. Yes.

"A. When I met him in Warren and we consummated this deal, he proposed to sell the whole 40,000 acres and I says, 'No, you must take an interest in the concern'; he came out openly and said how he was going to come out, he was going to make $2.00 only on it; and I said, 'You must take an interest in the concern, so that there will be the three instead

(Testimony of T. D. Collins.)

of the two of us, instead of Curtis and me, it shall be Curtis, Holbrook and myself.' He says, 'No, I can't do that; I am poor. I have got to have some money to pay my debts and live on'; but then we cut that down a little bit, you see at $2.00 an acre would be $84,000—I think he reduced it down to something like $70,000 or $60,000 and he took that much in stock and we made it the firm of Curtis, Collins and Holbrook.

"Q. With his stock at par to take 789 shares he would have to have taken $78,900 worth of stock?

"A. Yes: I testified a little while ago I thought it was about a fifth, or a sixth, but it was thereabouts, I don't know exactly how much, but he took off enough to pay his debts and clean his slate and the balance went into stock. [787]

"Q. You acquired 42,000 acres as specified in the contract, did you not? A. Yes.

It was turned over to the corporation as specified in the contract. I would not say positively that it was all acquired through the bank of California. There might have been some acquired in a different way. It seems to me there was a little bit but it was very little but that is the way the bulk of it was anyhow, so I will testify that way because the bulk of it was that way. That is the fact about it.

"Q. Do you know whether you got any other land after this by the scrip methods besides these 42,000 acres. Was there any other land acquired by scrip through the Bank of California?

"A. No, not through the Bank of California. I

(Testimony of T. D. Collins.)

think that ended it. There was not, to my knowledge.

We deposited the whole of the $200,000 called for by the contract in the bank. At the rate paid Holbrook as you see here, $7.50 an acre, there were $300,000 and some odd dollars paid. Now, then, according to the amount of stock you told about, he had $79,000 worth of stock, say $80,000 worth in round numbers, that deducted from the $317,000 would leave $237,000, that we put in; I am telling you now that we put in every dollar to cover that whole business with the exception of what Holbrook put into the company. Whatever it took to acquire the scrip we put up every dollar. I don't remember now putting up any additional money to the original $200,000 for the purpose of acquiring scrip. We might have done so. [788]

"Q. Did Mr. Holbrook suggest the timber and stone entries?

"A. Yes. There were timber and stone entries and there were other lands that came direct without the timber and stone entries, land that came in different ways.

"Q. That was to buy land outright from settlers?

"A. Yes.

I did not pay Holbrook personally the money for the timber and stone entries. The money was handed to him through the Bank of California. Every dollar that came from me went through the Bank of California and was drawn out for that purpose.

"Q. How was the money paid, was it paid on your

(Testimony of T. D. Collins.)

order or on somebody else's order?

"A. Well, it was paid I suppose on my order.

"Q. Do you know whether or not the money was paid in through the corporation to Mr. Holbrook—do you remember whether you paid the money into the corporation treasury and took stock for it?

"A. I took stock for it, yes, I took stock for it.

"Q. Do you know whether the money went through the corporation treasury or was the money passed direct to Holbrook?

"A. No, it went into the Bank of California for me as I told you. I never paid Holbrook a cent of money; he got everything through the bank, everything went through the Bank of California.

"Q. Everything went through the Bank of California? A. Yes.

"Q. Do you know how much stock you got under these stone and timber entries? [789]

"A. No, I don't.

"Q. Did you and Mr. Curtis put up equally for the taking up of the timber and stone entries?

"A. No, I put up the principal part of it. Curtis did not have the money."

He put up what he wanted to and I put up the balance. I think it was a very little part that he took and the money went through the Bank of California.

"Q. How were the deeds delivered?

"A. The deeds were delivered through this same person, this middle person; I didn't know anything about that, he said that they had to go that way, that is all I know about it.

(Testimony of T. D. Collins.)

"Q. Who received the deeds for the corporation?

"A. When the land was deeded from Gregory to the corporation?

"Q. Yes.

"A. I could not say as to that. I could not say whether Mr. Shurtleff here took those deeds and put them on record, somebody took them and put them on record, but I was in the East and I don't know who it was.

"Q. Do you know whether the deeds were ever put on record?

"A. I don't know, only from hearsay. I never saw a record in my life.

"Q. You never saw any of those deeds at all yourself?

"A. I don't remember ever seeing one of them. Just so they were passed through in the manner that was considered legitimate that was all there was to it; I had every confidence in the other man.

As far as I knew everything was all right; the whole business was all right and I still think so. [790] I don't know who had charge of the placing of the deeds on record after they were turned over to the corporation, unless it was Mr. Shurtleff.

"Q. You don't know as to that?

"A. No. But they passed through as I said, as far as was necessary in the way they had to be. All I wanted to know was that the thing was done in a legitimate, in a legal way you see.

"Q. What means did you take to find out that it was done in a legitimate and legal way?

(Testimony of T. D. Collins.)

"A. I don't know. I had confidence in them.

"Q. Who did you place your confidence in in taking up these lands, I mean who did you place your confidence in as to getting a good title for the company?

"A. I placed my confidence in C. H. Holbrook. Let me tell you, let me go back a little bit, to show you the confidence I had in Holbrook, and which I had in him up to the time he died. He told us there that there was so much timber that he had cruised, of such a quality, so many acres, and the land laid so and so, to take it up. When I came to examine that thing, about the land—and I don't say that I am much of a man to estimate timber, but in Western Pennsylvania, they consider that I am pretty good on it, and I can pass through the timber and tell at the first shot how good it is—now, when I came to examine these lands afterwards, there was more timber on these lands than he said there was. I could see at a glance that there was a better quality than he had represented; I could see at a glance that the land was finer by a great deal and better than he had said; the whole thing was very much better than he said. The general way of the dealings of men is to misrepresent or make better [791] than it is, but he always made it worse; as to everything it was much better. And from that time on I had that much confidence in him that I never questioned his dealings at the time. I never found him crooked in any way. In all his transactions he was square and even with me as any man I had ever had dealing with me,

(Testimony of T. D. Collins.)

and I have dealt with a great many men, and there is only one man that I dealt with that was the same as this man Holbrook and his name was Holbrook too; everything that those men did was as square as any man ever did. That is a fact, and I will swear to the last minute that I had confidence in him; everything came out so good when he done a thing and said a thing, it was so much better than he said it was, and with everything like that, why shouldn't I have confidence in him?

"Q. You left it to him to secure good titles for the company? A. Yes, I did.

"Q. You took his word that the titles were good?

"A. Yes.

"Q. As a matter of fact, did you ever discuss with him afterwards the character of the titles to the land? A. No, sir.

"Q. You never discussed that at all?

"A. No, it was just like the first 42,000; that came in as fine as could be; I saw where it was, and saw it was as good as could be, and it never ceased to be as far as I knew just as he said it was. These little details I never paid any attention to them, I don't know how it was done, but as I told you I wanted the titles solid and sound and legitimate; I didn't want a thing that was not legitimate Mr. Collins would never have that. [792]

"Q. Did you ever go over the deeds that he passed to the company? A. Not a one.

"Q. You never have seen a deed that you got of all the land that you paid for in taking up land?

(Testimony of T. D. Collins.)

"A. That man sitting in the chair, he has done the whole business; it has passed through his hands. My confidence in that man is as solid as it was with Holbrook.

"Q. Mr. Shurtleff?

"A. Yes, those things went through his hands and I left it entirely to him, as to whether it was right, and I have never had any reason to doubt one thing, never one thing in the whole business, but what it was all right, and I have no doubt yet, but what is was all right.

"Q. I understand you have very great confidence in those two men?

"A. Yes, right up to the time he died. To the outside world maybe he might have been the biggest rascal in the world, but to me he was as fine a man as you ever find in the world, entirely so.

I don't know whether the Curtis, Collins and Holbrook Company got title to all the lands that were paid for or not. I don't know about these details, not a word about it.

The only checking up of the lands of the corporation or their titles has been through Mr. Shurtleff. I suppose Mr. Shurtleff has checked up the titles.

"Q. Did you ever ask him for a report on the titles to the land? A. I don't think I have.

"Q. Do you remember the conversation which you [793] had about buying settlers' lands?

"A. I remember it right well.

"Q. Since that time have you never for one instant questioned the title nor have you taken the

(Testimony of T. D. Collins.)

trouble to check up to find out whether or not Mr. Holbrook actually delivered you the land which you paid for at that time?

"A. I believed he did, and I believe so yet.

"Q. Do you know whether he ever sold you any land from any entryman by the name of Wheelock which entries were cancelled by the Government, and to which patent was never issued?

"A. There were some lands, but I don't know Wheellock from Jones or Smith; but there was some lands they reported to me that we lost. I never went into the question of how they were lost or anything of that kind, who they were or what; they were a small amount and I let it go at that; I don't know how or why they were lost, but it was reported to me that we lost them; that is all there is to it, lost is lost, but I don't know why they were lost.

"Q. You never went into the question of why they were lost?

"A. Never into the question of how they were lost, they were gone, and that was all there was to it.

"Q. The Branley's land—

"A. I don't know anything about the Branleys.

"Q. You haven't the slightest idea how much land there was involved in these cases?

"A. No, I don't know now; it was not a large amount, some went, some was lost, I know that. [794]

"Q. Nobody ever told you that there were 11

(Testimony of T. D. Collins.)

entries that were cancelled of the land that was sold to you by Holbrook?

"A. Why, yes, they might have told me 11, but I did not follow it down; I might have been told how many there were, it might have been 11 or 5 or 7 of what not.

"Q. You would not consider that 11 entries of 160 acres each would amount to very much then?

"A. Yes, it would. A dollars is just as much to me as it is to you. But I put my money, all that I can spare, to upbuilding the world. That is all I am living for now; is to build up the world, and you can go from here to China, from one end of the world to the other, and you will find T. D. Collins educating the people, educating them how to live, that is my only object. That is all I am working for, I ain't working for T. D. Collins, or E. S. Collins, I am working, devoting my life to building up the world, and if there is anything wrong with this, it comes out of that, the bill for it, the price, and I ain't ashamed to acknowledge my Master, either, not a bit of it.

"Q. All I want to do is to find out about the facts, Mr. Collins. A. I am not ashamed of it.

I don't know how much land we bought at $10 an acre.

I have no idea where that land started in; that started in somewhere along there, but I think the most of it after the 42,000 acres was $10 an acre, but there was a little bit, only a little between the 42,000 and the balance of that we got at $7.50; that

(Testimony of T. D. Collins.)

is all I can say about it. My recollection is that most of the land acquired [795] afterwards for the Curtis, Collins & Holbrook Co., after the 42,000 were acquired, was paid for at the rate of $10 an acre.

"Q. Did the Curtis, Collins and Holbrook Co. acquire all the land through Holbrook, that is, was he the man from whom it bought all the land?

"A. I think not. Now let me see; there were some of these lands that we bought from the owners that had been gathered together, you see, in a little body; there were two or three parts that I remember of; I don't remember whether that passed through Holbrook or not, but I don't think it did. I think those lands we got came from the entrymen; I won't be sure that they did not go through Holbrook, but I don't think they did, at any rate. Holbrook never got any commission on that.

"Q. You know he never got a commission?

"A. On those pieces that we bought outside, that I think were bought outside of him, no. There was not very much, I think one body of 5,000 acres, if I remember right, I ain't sure; but you know I did not keep track of those small details, I simply kept it as a whole.

"Q. So you think then that the company did purchase some lands that were not purchased from Mr. Holbrook?

"A. I think they did, I will say yes, the title, of course, will tell it, the record title will tell it, but that is my recollection; I almost know we did.

(Testimony of T. D. Collins.)

"Q. Do you know how much additional stock you got of the Curtis, Collins and Holbrook Co., besides that that you got out from under this original contract?

"A. Why, the stock was all owned in the two families, the Curtis family and T. D. Collins, the stock [796] was owned by them and Holbrook and Tuman; Tuman got 200 shares from Holbrook for services or whatever it was, I don't know how he did get the 200 shares from Holbrook; he got it in some way; that is none of my business, he had that and the balance was in our two families, and it is now all in the Collins family, the whole business now."

The fire burned up our records and probably in an eternity you can only tell how many shares of stock there are in the Curtis, Collins and Holbrook Company at the present time, but as long as we own it, what is the difference to me whether it is 500 shares or 5,000 shares; nobody has any interest in it outside of F. S. Collins and me. As to what interest I had in the corporation before I began to buy out Mr. Curtis and Mr. Collins, I can only tell you this much—and I may be saying something a little outside, my point in doing business in these corporation things or individual partnerships is to reach out until I get a controlling interest in the corporation and when I got that I was satisfied; I got that first, and then I bought the other fellows out; I think I got the controlling interest on one deal with Holbrook, he came to me

(Testimony of T. D. Collins.)

and he wanted to sell me 200 or 250 shares of stock at $125 a share; I said to him, "Is that what you ask for it," and he said that was what he asked, and I bought it. When I bought that stock I never questioned them about the price. I paid them what they asked and never asked them to take less. I don't know how much stock I got through putting up my money for the acquisition of timber. I proceeded on until I got a controlling interest. I think I had a controlling [797] interest before I began buying Holbrook and Curtis out. I think that when the 200 shares from Holbrook came to me, that was the turning point. When I owned that I was anxious to get it all. After that they all came up, and as they say, it was as easy as an old shoe. From that time on they began selling to me and I bought it from time to time until I got the entire stock. I bought Tuman out.

"Q. Do you remember how much you paid Mr. Tuman for his interest?

"A. Yes, I remember it to my sorrow, but there is no use of going into the details, there was something behind it. I paid him $150,000 for 200 shares of stock, but it was twice what it was worth in my estimation, but it was simply this, that we had control for ourselves, it didn't make any difference whether that stock was burned up or anything; we owned it; it was done to cover up some other things, it was not for the value of it, it was other things that were to be considered.

"Q. Can you tell us what those other things are?

(Testimony of T. D. Collins.)

"A. I don't think it is necessary for me to tell the Court that. This is not the time to tell about that thing. There was the character of a man that was bound up in it, the character of that man has nothing to do in this Court.

The MASTER.—"The whole transaction, Mr. Collins, is chiefly concerned with Mr. Tuman, and we have heard a good deal about Mr. Tuman and this point which you said you did not care to disclose, it will make no difference in this court what you say; the way you have left it, I would suggest that you tell the story, because you have spoken in the record something about paying this money to Tuman in a way that was [798] not creditable to him. Now, was it not creditable to somebody else?

"A. Not creditable to somebody else. I will tell you it in a few words. There is a man whose name is B. F. Durphy; a man came to me named Root, clear East, and he says B. F. Durphy has that stock, that 200 shares in his control; B. F. Durphy, according to our experience was a rascal of the deepest dye—that ought not to come out in a court; according to my experience, and my opinion, he was a rascal, but I don't mean to say that outside; that is my opinion and my experience. Now, then, for him to be in the company, I would not have had him there for $150,000, I would not have had him in there for anything, and, as a consequence, I paid the bill and got it, that is the whole story. That don't effect Tuman at all.

(Testimony of T. D. Collins.)

Mr. PIER.—"Q. Did you ever inquire of Tuman if Durphy had control of the stock?

"A. No, I did not in any way inquire of Tuman, but somewhere he had his hand on it in some way like a vice, and I didn't want him inside; I thought he would make trouble for us outside and inside, and I paid the money, and the money I paid I would not have had him in there for all that money."

I did my business in that connection with an agent sent to me by the name of J. A. Root. I never made any inquiries of Tuman, at all, about the transaction. I never went to see him to ask him about it. I will say this much, that I had to do it quick. I had no time to ask around. It was presented to me and I had to do it quick or not; some of these things have to be done [799] quick. When Holbrook came to me I knew the character of the lands that Holbrook presented. I found it out from different sources, from people in California. We had lands up in Washington and Oregon, and I am a timberman, and I like pine, and the timber up north was fir, and they told me in different places, one here and one there, I couldn't say who they were, that there was a body of land up from Chico of the finest pine that there was in the country, and when he presented that and in the very heart of that belt that I had heard of from these different people, I couldn't say one of the person's name, that I had that from, but I was satisfied it was right in that belt. I cannot name a specific person that I talked to about it; it was not

(Testimony of T. D. Collins.)

one person, but probably a dozen different ones here and there; different ones that there was a fine body of timber land, they knew it was fine, in the Government's hands. Mr. Curtis and I had been interested in only one other timber deal together. That was the Pennsylvania Lumber Company, or the lands right east of that, and I took some stock in that with Curtis, and was interested in that, too, and then this came up right after that. This is right west from that, one is on the slope there going to the east, and the other going to the west. I have never had any timber deals with Curtis before Dan brought Holbrook up to see me at my home. The Pennsylvania deal was before the Holbrook deal. I did not go out to California the same year that I had my talk with Holbrook. I did, the coming year, and looked at those 42,000 acres. I came in from Chico, went over by stage, and stayed at Bunnell's at Prattville, and [800] went over the 42,000 acres covered by the contract.

"Q. Did you go over any of the prospective lands that Holbrook proposed to take up under the Timber and Stone Act?

"A. No, I just went on that part and that is all, just went through it this way and that way, and I was satisfied in my mind it was fine; I was satisfied with it.

"Q. You were satisfied with it?

"A. Yes, I was."

The lands that the Curtis, Collins and Holbrook Company purchased, some of them extended away

(Testimony of T. D. Collins.)

beyond Quincy. I could not say exactly where it is, but I have looked over the whole business from time to time. At the time of the trip up there in 1902 we only had 42,000 acres, but afterwards we got the balance of the 80,000 acres and every once in a while I went over it so that I knew what I was doing.

"Q. Did you look at these lands at all before you paid your money to the bank of California—had you had a chance to look at the 42,000 acres before you paid the money into the Bank of California?

"A. Why, bless my soul, the first thing we did in five days we had to raise that $200,000, I had my $100,000 ready, and Curtis had to get his in.

"Q. So you put up your money before you had seen a speck of timber?

"A. Oh, yes; you see I had this knowledge ahead, and the point was so and so, and I was satisfied to do it, some people call it a gamble, I don't call it a gamble, I had confidence in the man, and knowing this timber that I had heard of from these different ones about, I was satisfied [801] that it was on the belt of timber I knew about, and when I came to see it and saw everything, it was much better than I ever expected."

The corporation may have employed Tuman for doing some work in connection with the corporation, but I don't know. All of the lands Tuman cruised. Of course the 42,000 acres were cruised for Holbrook. I don't know who paid Tuman, or how it was paid or anything about it.

(Testimony of T. D. Collins.)

"Q. Do you know whether Tuman has been in the employ of the corporation since 1902 or 1903?

"A. That is what I am talking about, that is what I stated.

"Q. You don't know anything about it?

"A. No.

"Q. Who had charge of the office out of here of the Curtis, Collins and Holbrook Company from the time it was formed?

"A. Well, that is a little hard to answer, but I will answer the best I can. C. H. Holbrook, Jr., was a clerk that done the business, and C. H. Holbrook, Sr., was another, those two men, father and son, were in that office all the time; in fact, the office rental was paid by C. H. Holbrook personally, a part of it, and a part by the company; he had his own business, you see, and it was there, and the rental of the office was paid partly by him and partly by our company.

"Q. Partly by your company?

"A. Yes, he did his business there and he did what business we wanted.

"Q. And the records of the office, he had charge [802] of all the records of the office? A. Yes.

"Q. And all the deeds and all the papers and that kind of documents?

"A. Yes, I would think so. The deeds, of course, would go to be recorded; the papers that were not recorded were deposited there in a safe, we had a safe there."

I don't know when I got my stock covering the

(Testimony of T. D. Collins.)

timber and stone entries. I think we were more than a year acquiring those lands; however, it might have been all done that year.

After the 42,000 acres were acquired, and we then formed the corporation, and any money was needed to get other lands, I deposited money in the Bank of California. For the money that was deposited in the Bank of California to cover the land, stock was issued to me at the rate of $10 an acre, and I got one share for every $100 deposited by me.

"Q. When it came to pay for the land and the deeds were turned in the check would be drawn against that by young Curtis, D. G. Curtis, who was the treasurer of the corporation?

"A. Probably so, I don't know that part of it, but I know the money that I put in there, and that was all there was to it, the details I don't know anything about.

"Q. You left that entirely to Mr. Holbrook?

"A. Whoever was here.

"Q. Whoever was here to take care of it?

"A. D. G. Curtis, was here and he was the treasurer and if he was the one that did it, he did it; whoever the one was did it, that part I don't know anything about, I put my money in there, and I got the stock.

"Q. You got the stock? [803]

A. That is all.

Q. Under the terms of the contract there was a provision made that if it was necessary to have

(Testimony of T. D. Collins.)

more than $200,000 to acquire scrip that you would put it up? Did you ever have to put up any more to acquire additional scrip, or was the $200,000 sufficient to cover it?

A. We put in more.

Q. You had to put in more?

A. Oh, yes; that is according to my recollection.

Q. To cover the scrip you had to put in more than $200,000? A. Yes, I think so.

Q. What I had reference to was whether or not—the contract provided that Holbrook should have the profit from the cost of the scrip?

A. Holbrook had to buy that scrip himself, he had to buy it.

Q. He had to buy the scrip?

A. We bought the land at say $7.50 an acre, and whatever that scrip cost he had to pay it, and if the scrip cost $8.00 an acre, he would have to pay it; he bought it, we did not buy it.

Q. What I had reference to is this, the contract provides that he should have the difference between the cost of it and the $200,000 for his profit.

A. Yes.

Q. What I want to know is whether he made any profit out of the $200,000 that was put up?

A. Why, yes, he bought it at $5.50 an acre and got $7.50 an acre, that made a profit of $2.00.

Q. You don't follow me, Mr. Collins. The point I had reference to is this, that you were to put in that $200,000 which would practically cover the stock at $5 an acre. Now, if he was able to buy

(Testimony of T. D. Collins.)

the scrip at $3 an acre there would be considerable profit for him? A. That would be his.

Q. Do you know whether he made any profit on that? [804]

A. I don't know anything about that; that was not my business.

Q. You don't know anything about that?

A. No, presumably he did make that much, because he could not have acquired his stock in any other way.

Q. I do not think you follow me there. I know there was a difference in the profit between the $5 and $7.50 an acre that is called for under the terms of the contract, but there is also a provision in the contract that if he could purchase scrip for less than $5 an acre he should also make a profit there?

A. He got it all.

Q. What I had reference to, do you know whether he made any profit there, that is by buying the scrip at less than $5 an acre?

A. I don't know except on general principles, he could not help it.

Q. He could not help it?

A. He could not help but make a profit.

Q. Do you know what scrip was worth at that time? A. Five dollars and fifty cents.

Redirect Examination.

Q. Mr. Collins, I just want to ask you about that Tuman transaction, that $750 for the Tuman stock that you paid; you bought that a year ago, about?

(Testimony of T. D. Collins.)

A. Yes.

Q. Have you ever talked with Tuman about these cases, what his testimony was going to be or anything of that kind?

A. I have never seen Tuman since at all.

Q. At that time, did you?

A. No, nothing at all. At the time I bought that stock I did not see Tuman.

Q. You did not see him and did not talk with him?

A. Never seen him to talk with him since. [805]

Q. Let me ask you this question. In paying him $750 a share for that stock, did you feel that if you did that it might influence his testimony in any way in this case?

A. No, nothing to do with it at all.

Mr. Curtis was interested in the Bayside at that time, with me.

Q. I do not quite understand your testimony about this money that you deposited in the Bank of California; was that to pay direct for your stock or did you get for every acre of land that was turned in stock at the rate of $10 an acre? A. Yes.

Q. Which was it, that you paid cash for your stock, or did you turn land in for your stock, or was it both or either?

A. You can make it just as you mind to; I put that money into the Bank of California; it was there; it was drawn out if it was necessary to draw out, and that is all I know about it.

I don't remember whether Mr. Shurtleff made re-

(Testimony of T. D. Collins.)

port on the land titles at the time he bought Mr. Holbrook [806] out or not.

Recross-examination.

"Q. Your extensive holdings are pretty valuable now, aren't they?

"A. Yes, they are; I must say they are.

"Q. About how much do you think they are all worth, the timber holdings?

"A. Don't ask me such a question as that, please don't.

Mr. SHURTLEFF.—"Just approximately, Mr. Collins, what do you think they are worth in California?

Mr. PIER.—"No, all of them; I just want to know as to your holdings.

Mr. SHURTLEFF.—"I object to that as immaterial.

The MASTER.—"No, it is totally irrelevant.

Mr. PIER.—When you started out in this timber business did you have any money of your own that you put into it; what I mean is this, have you made all your money out of timber?

"A. The main bulk of it has been made out of timber, and in manufacturing, there are little things that I have here and there, but they are trifling."

I never inherited any money to amount to anything. [807]

Testimony of E. S. Collins, for Defendants.

E. S. COLLINS, called as a witness for defendants testified as follows:

I reside in Ostrander, Washington, and have lived there for about 22 years past. My age is forty-seven and my business is that of lumberman. I have been engaged in that business since I was 16 years of age. I am the son of T. D. Collins and am the E. S. Collins whose name has appeared here from time to time as being interested in the Curtis, Collins and Holbrook Company. I know D. G. Curtis and met him first in Susanville in September or October, 1901. I know his father, J. G. Curtis. I met him first in 1902. I knew C. H. Holbrook, Sr., in his lifetime. I met him first in the winter of 1901 or 1902, after the execution of the contract for the purchase of the land was signed. I did not reside in the State of Pennsylvania during 1901; I might have been there on a visit. I was not in Pennsylvania at the time Defendant's Exhibit "A" for identification or "B" for identification were executed. I know George E. Tuman. I don't recall whether I first met Tuman in the winter of 1901–2 or the next summer. I know I met him when I went up in the woods where the timber was. I am an officer of the Curtis, Collins and Holbrook Company, the defendants in this case, and have been a director of it from the beginning. At first I had only a few shares of stock; I don't know when I acquired the rest of my stock. [808] At the present time I am vice-president. My best

(Testimony of E. S. Collins.)

recollection is that my father T. D. Collins has been president of the corporation since its first organization. Mr. Curtis, senior, may have been the first president of the corporation.

Mr. SHURTLEFF.—"Did you ever at any time have any conversation with C. H. Holbrook, Sr., concerning the fact of acquiring or getting of the timber land involved in these different suits?

"A. Well, I will have to explain just a little there; I understand the company has some timber lands that are not involved in these suits, some other timber and stone entries and I can't distinguish the conversations that I might have had with Mr. Holbrook with one or the other, I don't know; I was not conversant with that, but I had some talk with him before or near the time that he wanted the company to buy the timber and stone entries that he made or was going to make, I don't know which.

"Q. You say he wanted who to buy them?

"A. He said he wanted to sell to us—I refer to the company, that is a little misleading because the company was not formed then.

"Q. Who were the parties interested?

"A. The parties buying the timber were the parties to the contract, Collins and Curtis.

"Q. But you are unable to divide that conversation. How many conversations did you have with him in relation to timber lands?

"A. That I am uncertain of; I know I was in the city, off and on, at various times, and I came in and

(Testimony of E. S. Collins.)

talked [809] with him about the affairs of the company, but I could not say as to that.

"Q. What was this conversation that you had?

"A. As I recall now, the understanding as was told me in the east was that the land was to be acquired by forest reserve base that the company—I referred to the company, excuse me—that Curtis and Collins had contracted to buy. There came a time when Mr. Holbrook informed us that he could not get any more scrip to advantage or little scrip to advantage, at least, and he wanted to sell to the company—

Mr. PIER.—"Q. Is this what somebody told you or what Mr. Holbrook told you?

"A. I am getting to what Mr. Holbrook told me.

Mr. SHURTLEFF.—"The fore part of that, what somebody told you, what you heard, you cannot testify to, Mr. Collins.

The MASTER.—It is not proving the facts.

Mr. PIER.—"I was willing for the introduction to come, but I did not want it to be proving the fact at this time by his testimony.

Mr. SHURTLEFF.—"Q. Now, you said there came a time; what else were you going to say?

"A. Mr. Holbrook wanted to sell to Curtis and Collins lands that had been acquired or were to be acquired, I don't know which, I could not tell you, by the timber and stone entries.

"Q. Were you present at this time you are testifying to now?

"A. I was present at Mr. Holbrook's office at the

(Testimony of E. S. Collins.)

[810] time I speak of, but I cannot set the date of that conversation, I don't know what date that was.

"Q. Was there anything further said?

"A. Yes. The matter was under discussion. I had lived in the northwest and knew something about the land laws of the west and I was particularly anxious that there be no trouble with the title, that everything would be done straight and proper and square, and Mr. Holbrook assured me that that was the case, that everything was done absolutely straight and square and honest and he would personally guarantee the title. At that time I understood Mr. Holbrook wanted to stay in the company that was to be formed, that was planned to be formed later, the corporation, and I thought that he would be one of us through the years to come, and that his personal guaranty would be worth everything to us.

"Q. Did you ever have any conversation with Mr. Holbrook, Sr.—do you know C. H. Holbrook, Jr.?

"A. I do.

"Q. Did you have any conversation with Mr. Holbrook, Sr., or Mr. Charles Holbrook, Jr., or George E. Tuman or any other person or persons touching the manner or procedure followed in acquiring these stone and timber entries?

"A. No further; no. Mr. Holbrook satisfied me that everything would be done all right, in an honest, square and proper way, and I never took it up with him afterwards."

The first time I heard that the Government was

(Testimony of E. S. Collins.)

making charges of fraud as to the method by which these lands were acquired was somewhere near the time of the fire. It is impossible for me to state the time. I know my father purchased the stock of D. G. Curtis, [811] J. G. Curtis, and C. H. Holbrook, Sr., and C. H. Holbrook, Jr., but I don't recall the exact date. It was before the fire. I think it was after the purchase of this stock that I heard the Government was making a claim of fraud. My recollection on that is a little hazy. I have reasons for thinking I heard of these charges of fraud after the purchase.

"Q. Do you recollect ever having discussed these different titles with me at any time?

"A. I don't remember having discussed these titles with you previous to the time that Mr. Holbrook and Mr. Curtis were brought out; after you took charge of the office there might have been a discussion."

At the time my father purchased the stock of C. H. Holbrook, I think that he and myself asked Mr. Shurtleff to make an examination of the property of the company, that we wanted to know everything was all right before they were bought out. I think such examination was made; I am sure of it, in fact, and I think the report showed everything was regular so far as could be found out, and that there was nothing wrong with the titles, and I think Mr. Holbrook was bought out immediately after that and also Curtis, but I am not positive as to that. I am positive that they were bought out before the fire.

(Testimony of E. S. Collins.)

Mr. SHURTLEFF.—"Q. Do you know Charles E. Gregory? A. I do not.

"Q. Did you ever meet him? A. I never did.

"Q. Or talk with him?

A. Never talked with him.

"Q. Do you know whether or not a large portion of the lands involved in these 79 suits passed into his name? [812]

"A. No, I never looked at the titles; I presume it did, but I don't know it.

"Q. If they did, do you know anything touching that or the reason—do you know the reason why it passed into Mr. Gregory's name?

"A. Because Mr. Holbrook arranged it that way and we let it go that way.

"Q. Do you know whether or not some of the deeds pertaining to or affecting the different lands involved in these 79 suits were kept off the record, were not placed on record?

"A. Since the fire we have discussed that, you and I, and I know it from you; I don't know that I knew it before; I might have known it before and I might not; I don't know.

"Q. Do you know why they were kept off the records?

"A. Because Mr. Holbrook wanted them to be, I presume; he was running the company.

"Q. Do you know why yourself?

"A. No, I do not.

I remember that in late years I have discussed

(Testimony of E. S. Collins.)

with Mr. Shurtleff, the fact that the deeds were kept off the records. The result of that discussion was that he thought they ought to be recorded and I thought they ought to be recorded, and when he took charge of the office, as near as I can find out, they were recorded. Mr. Shurtleff took charge of the office immediately after Holbrook sold out, shortly before the fire. Mr. Holbrook was in the company in 1904 and he was out of the company at the time of the fire. I never paid out any money for this land, myself, and I don't know how it was done. It was not part of my job. [813] I probably at the time, did know more about it, but I don't know now. I think I have attended more than half of the meetings of the Board of Directors and the stockholders of the company. I do not recall any resolution ever having been passed by the Board of Directors or even at stockholders' meeting, authorized and empowering and directing Mr. C. H. Holbrook to purchase lands for the Curtis, Collins and Holbrook Company.

"Q. Do you recollect at any informal meeting of the directors or stockholders of the company, either a large number or a few, when any such arrangement or discussion was had or made? A. I do not."

I know J. E. Remick, sitting there at Mr. Shurtleff's right. I do not know how long I have known him. I met him on one of my trips into Plumas County in the summer of 1902 or 1903. I have not discussed with him the manner of acquiring these

(Testimony of E. S. Collins.)

lands or how they were acquired by Mr. Holbrook, unless it has been since the suits have been filed. I know Arthur Elam. I think I met him first on a trip to Humboldt County in 1903 or 1904. I do not know John W. Aid. I know John H. Heppe. I think the first time I met him was two years ago, a year ago last summer. I do not know Alexander Cameron, Fred Scott, nor Willard C. Brown. I met L. C. Remick, the brother of J. E. Remick, in the office of Mr. Shurtleff a year or possibly two years ago. [814] I don't know A. F. Head. I have been at Prattville several times and stopped at Bunnell's, and I must have met one or the other of L. A. Bunnell or L. W. Bunnell, but I have no recolloction of them. I never met N. F. Golden. I know where he comes in. I never met John Louis Gray nor Robert C. Taylor. I have discussed during the last year or so, with Mr. Remick and Mr. Tuman, some of the features of the manner of acquiring these timber and stone entries. Prior to the commencement of these suits I have not discussed with George E. Tuman, that I know of, these timber entries. I don't know any of the entrymen whose lands are involved in these suits with the exception of L. C. Remick and George Tuman's mother, Henrietta Tuman. I met Mrs. Tuman at Mr. Tuman's house in Oakland four or five years ago. I never mentioned this timber land or her timber entry to her.

"Q. You don't know any of these persons and never discussed any of their entries with them, as I understand? A. No."

(Testimony of E. S. Collins.)

At the present time 806 shares of the stock of the Curtis, Collins and Holbrook Company is in my name. I do not know how much stock my father owns in the company. I don't think he does. He did not keep any accurate account of those things. It was my job to do it and I don't know how he would find out. I was never interviewed, that I know of, by an [815] agent of the Government, in reference to the lands of the Curtis, Collins and Holbrook Company.

"Q. Now you state that you had a conversation with Mr. Holbrook, touching the stone and timber lands, and you did not know whether that conversation related to these particular lands or others of the company. I will ask you if you ever had any conversation with Mr. C. H. Holbrook, Sr., or Mr. C. H. Holbrook, Jr., or George E. Tuman touching the timber and the lands of the Curtis, Collins and Holbrook Company which had their origin in stone and timber claims, other than the conversation which you have related here to-day?

"A. I am not sure that I did; I might have had it, but I don't remember it.

"A. Well, what I mean is conversations of a different import, or anything different from what you have stated to-day?

"A. No, sir; I was satisfied with Mr. Holbrook's explanation and so on of how the work would be done and I dropped it at that."

I do not know accurately the proportion of stock

(Testimony of E. S. Collins.)

that Mr. Holbrook held in the company when he owned most of his stock.

"Q. Do you know whether he ever owned one-half of the stock? A. No.

"Q. One-third of the stock?

"A. It is a little vague, but to the best of my recollection and knowledge he owned 20 per cent of the stock; he never owned any more than 20 per cent, and I think possibly not more than 15 per cent." [816]

Cross-examination.

I do not know how many shares of the Curtis, Collins and Holbrook Company are outstanding. I don't know whether anybody knows or not. When the corporation was first organized it had 5,000 shares. I believe they were all issued because we needed more capital as we acquired the land. As they required capital it was put in, and the stock was issued actually for value received. The corporation increased its stock from 500,000 to one million. I am very sure a part of the increase of the stock was issued because we needed more finance and after the increase the finances were put in. The lands purchased after the first 42,000 acres, were bought at $7.50 an acre. The present holdings of the corporation are about 72,000 acres.

"Q. Then there were about 30,000 more acres of land acquired? A. Yes, about that.

"Q. Do you know how that was acquired, what was the price paid for that?

"A. The last lot obtained was at $10 an acre; where the distinguishing line was between the $7.50

(Testimony of E. S. Collins.)

an acre and the $10 an acre, I cannot place it, I don't know.

"Q. Did the company acquire all its lands through Holbrook?

"A. Every bit that I know of.

"Q. Was acquired through Mr. Holbrook?

"A. Bought through Mr. Holbrook.

"Q. You don't know just where the price of $10 was added? A. No, I don't know. [817]

"Q. Now, you have related a conversation here that you had with Mr. Holbrook about the acquiring of the timber and stone entries; land that had been taken up under the timber and stone entries; do you remember about when that conversation was?

"A. No, I can't place it.

"Q. Do you know whether or not that was before or after the corporation was formed?

"A. Before the corporation was formed, I am very sure, but then I cannot place it exactly.

"Q. You cannot place it? A. No.

"Q. Did you have any subsequent conversations with him about the land?

"A. Not on that subject.

"Q. Not on that subject?

"A. Not that I remember.

"Q. Did you have anything to do with the title being passed to the company? A. Not at all.

"Q. That is the details of taking the deeds and the paying of the money or anything of that part of the transaction? A. Not at all.

"Q. When the deeds were taken who had charge

(Testimony of E. S. Collins.)

of the handling of the deeds?

"A. Mr. Holbrook.

"Q. Mr. Holbrook had entire charge of the handling of the deeds?

"A. He had the entire charge.

"Q. And the entire charge of the placing of them on record and all that matter was in Mr. Holbrook's hands? [818]

"A. Until he left the company he had entire charge of those things and then Mr. Shurtleff had.

"Q. After Mr. Holbrook left the company he had?

"A. Yes.

"Q. Now, Mr. Holbrook, told you in that conversation that he would guarantee the titles; were the titles ever guaranteed to the company by Mr. Holbrook?

A. Not any more than—there was no company at that time—we get that thing mixed. There was an agreement to form a company and we have always spoken of that as a company and so on, but there was no incorporated company at this time.

"Q. Did Mr. Holbrook ever guarantee titles to anyone?

"A. Personally, just as he did to us, no paper drawn up.

"Q. There were no papers drawn up at all?

"A. No, we had unlimited confidence in Mr. Holbrook in his ability and honesty, and we took his word as final the same as we did among ourselves as business men.

"Q. You even allowed him to pass upon the titles

(Testimony of E. S. Collins.)

and took his word that the titles were good in the matter?

"A. Well, there is no way of finding out whether the titles are good or not; the forest reserve was passed on by Mr. Shurtleff.

"Q. The forest reserve was passed on by Mr. Shurtleff? A. Yes.

"Q. And the timber and stone entries, you don't know how they were passed? [819]

"A. No, I don't know how they were passed, naturally they could not by any abstract made of them; it might have been it would be passed through Mr. Shurtleff."

I don't know whether my father got control of the corporation while he was advancing money for the purchase of timber or whether he got it at the time he bought out Mr. Holbrook. There is a close line of division. He owned approximately 45 per cent and Mr. Curtis 45 per cent, and the line of division there between the time he got control and when he did not have it was narrow, and I could not state the date at all when that occurred. I don't know how many shares of stock my father bought from Mr. Holbrook. I did the business representing my father when he was not around and when he was on the job he was the whole show. He did what he wanted to do; he paid all of his money and I did not have much to do with it.

"Q. Have you ever heard that any of the land for which you paid your money and got your deeds, that

(Testimony of E. S. Collins.)

the titles never issued by the Government to the entrymen, for those lands?

"A. Yes, I knew by hearing the conversation yesterday what you are getting at; I don't know. I might have known. There are many of the details of the company I did know but have forgotten, the same as I had forgotten the business transactions I have been in during the last ten or twelve years."

I presume the deeds were obtained from the entrymen before the patents issued. I don't know it of my own knowledge. I had no connection with the entrymen at all. [820] I don't know when the major portion of the lands were turned over to the corporation. I don't know when the lands were turned over under the contract. I presume they would be turned over when the company was organized.

"Q. When do you first remember hearing that a number of these entries were cancelled?

"A. Possibly from reading Mr. Tuman's testimony about two weeks ago, a transcript of the testimony; that refreshed my memory on lots of things and gave me a knowledge that I did not have before."

I don't remember any investigation being made to ascertain why the entries were cancelled. I don't remember that I knew of their being cancelled.

"Q. You stated that you learned about the Government charge that some of these entries had been taken up by fraud at the time of the fire. What was your source of information?

"A. I think through Mr. Shurtleff's office."

(Testimony of E. S. Collins.)

Mr. Shurtleff told me at the time that the Government was attacking our titles and was investigating them. Mr. Shurtleff gave me information, but I don't know what his source of information was. If I did I have forgotten. I am not sure whether I heard of it before these suits were filed or not. I am not certain when I first learned of it. I don't think it was as far back as the fire, for the reason that we would have been very loath to buy out the other stock and pay a full market value for it; that is the way I link it up that I did not know of this trouble of the Government attacking the titles then. [821] I don't remember Mr. Shurtleff ever making a report that on certain lands the patents had not issued. I do not remember whether he ever made any explanation as to what the status was or the reason why the patents had been held up. I don't think that I ever took up the matter of finding out why the patents had not issued; as a matter of fact, I had known of patents having been delayed a long time before being issued, and it would not excite any great amount of suspicion in my mind, the Department is away behind at times, and those things some times go slow. I met Mr. Remick sometime in 1902 or 1903, at a little mine of his, near Taylorville. I heard of the mine from Tuman or Holbrook. I think my father was along at the time. I am not sure that Mr. Curtis was there; and someone was with us showing us around, either Mr. Holbrook, Sr., or Mr. Tuman. Whichever one was showing us the country was the man who took us through there. We were probably

(Testimony of E. S. Collins.)

at this mine or prospect, about an hour and a half. We first went to Plumas County in the summer of 1902. On that trip I was accompanied by D. G. Curtis, Minkler, and a man from the East by the name of Swanson. I got down as far as Prattville that year. My father wanted me to go down and look at what are known now as the Pennsylvania Lumber Company's lands, and I went in by way of Reno and Susanville and met Mr. Curtis, Jr., there. That was the first time I met him. We went down to Prattville, to Deer Creek Meadow and back to Susanville. I don't recall going as far as Quincy or Humbug Valley or Soldier Meadows. The next trip I made into that country was in the summer of 1902 after the purchase was made. I am not sure who was [822] in the party, but I am certain my father, D. G. Curtis and C. H. Holbrook, Sr., were there. I think that was the first time I met Mr. Tuman to know him. On that trip we looked over generally, the 42,000 acres that we had acquired. I don't think we were to Quincy until the year after, I am not positive about that. We never stayed in that country very long. We might have been there probably three or four days, just drove through it rapidly; where we had any timber land Mr. Holbrook would say, "Now, we own a tract of timber land which is over there," and we very seldom got out of the rig to look at it, we just sat in the rig and talked it over a half minute or so and would go on, we went over the country very quick. During about three years of that time, I cannot state the dates, I

(Testimony of E. S. Collins.)

made about three trips. On the last trip Mr. Holbrook, Sr., was with me. My father was with me on that trip. I don't remember whether Mr. Curtis was along or not. We met Mr. Tuman off and on. The times we were up in that country, sometimes he was with us and sometimes he was not. I cannot say any particular trip Tuman was with us. I think it was on the second trip we went to Remick's mine. The first trip was in 1901 and the third trip in 1903. Mr. Holbrook, my father and I were on the third trip. I don't remember whether Mr. Tuman or Mr. Curtis were along or not. I do not know when these trips took place; it is vague in my mind, and even the actual taking of the three trips I made. Possibly it was two trips, but I think three trips was all I made. The first trip was in the midsummer of 1902. I am trying to link this up and I think that we incorporated the company August 15th and then went up into the timber. That is the best that I can locate it by date; and I think [823] it was coming down from that trip that Mr. Tuman and Mr. Curtis and myself, with a couple of packers started through Deer Creek Canyon. At Susanville I stayed at the Emerson Hotel. That is the signature of myself and those of my father and Dan Curtis in the Emerson Hotel register under date of August 22d, 1902. Mr. Tuman was also registered at that same time. I first got well acquainted with Mr. Tuman in going down on the trip to Deer Creek Canyon. That, I believe, was immediately after the time you spoke of. I became very well acquainted with him on that trip.

(Testimony of E. S. Collins.)

It is my belief that this trip of August 22d, 1902, is the one on which we went out to look at the Curtis, Collins and Holbrook lands or what are now the Curtis, Collins and Holbrook lands. This was my second trip into the country. My impression is that the lands that we bought under the contract of December, 1901, we did not see until the following August. We might have been up there to see that land before; I am not sure, but that is my impression. The first time I was ever in Susanville was in the fall of 1901. When I first met Mr. Curtis we went down to Deer Creek and that is the land Mr. Holbrook talked to them about when he first went East, and that is why they bit on it so quick. Mr. Holbrook introduced Mr. Tuman to us personally. That must have been because Mr. Holbrook would not have given me a letter of introduction to Mr. Tuman when he was going [824] to meet Mr. Tuman face to face in the same party that I did. On our trip to Remick's mine we went from Prattville to Taylorville and from Taylorville out to the mine. Everything in the whole country there was interesting to us, and it was new to us, and we were up there to see everything in the country, and there was not a single resource in the country that we were not interested in, and we tried to see all we could; we looked at everything on the way that was interesting. I don't remember whether Tuman or Holbrook pointed out to us a belt of timber over there we had already acquired or were going to acquire on that trip. He might have; I think probably as a matter of fact he

(Testimony of E. S. Collins.)

did. He might have; I think probably as a matter of fact he did. We certainly looked at the Curtis, Collins and Holbrook lands on that trip as we passed through then, and our attention might have been called to the lands that we were hoping to acquire. I don't know; but I don't remember that distinctly. I am indistinct about when I first met Arthur Elam. I think I met him on a trip to Humboldt County in 1903. The Curtis, Collins and Holbrook Company was not interested in the lands that we went up to Eureka to see, nor was Holbrook interested in them. The Curtises were interested with us in that transaction. I first learned that Tuman was interested in Holbrook's venture when I came down to Deer Creek Canyon with Tuman and I think it was immediately after the entries in the hotel register there at Prattville that you (Mr. Pier) showed me, in [825] August, 1902. We became very well acquainted on that trip and I think that he probably casually informed me that he had some interest with Holbrook. Mr. Elam was cruising lands for us last summer. I see by his letter-heads that he has a corporation formed for the purpose of cruising land and giving information on timber land to people. I employed Mr. Elam alone and not the corporation. I don't know anything about his corporation or his arrangement with it.

"Q. Mr. Remick has been in the employ of the corporation for a number of years, has he not—the Curtis, Collins and Holbrook Company?

"A. No, I don't think so. Mr. Remick was em-

(Testimony of E. S. Collins.)

ployed by the corporation as caretaker after Mr. Heppe's release, I guess you would call it; just what that date is I don't know. That is a matter of record I think; I am quite sure that has been since the fire."

I think Mr. Remick has continued in the employ of the corporation ever since. Mr. Remick looks after anything to be done up in the timber. Mr. Shurtleff has charge of the employment of anybody that needs to be employed. He asks us what is to be done when he doesn't know. Mr. Shurtleff sent me a transcript of Mr. Tuman's testimony to East Ostrander, and as I had time, I have read it, probably two weeks ago. I have never seen Mr. Tuman since the suits were commenced or since he was examined here as a witness in the connection with the suits. I have seen him since the suits were commenced two or three years ago. I never saw [826] him in connection with the suits but I came down here on other business and met Tuman during the time of his illness a year ago last December. I never discussed with him the taking up of the timber entries at all.

"Q. You never discussed that with him at any time?

"A. Now, you are getting a little technical; I will have to be careful. I discussed our lands being in litigation with Mr. Tuman; I have discussed that since the suit at various times when we met; about the taking up of the land I never discussed that with Tuman or with Holbrook."

(Testimony of E. S. Collins.)

The MASTER.—"What do you mean by about the taking up of the land you have never discussed it with Mr. Tuman or Mr. Holbrook. Do you mean the way in which it was taken up?

"A. Yes; the possibility of fraud and things of that kind; that feature of it, the manner in which the lands were acquired before final proof.

"Q. Now, that reminds me of a remark you made upon your direct examination which I want to ask you about. I think you said in talking about that conversation with Mr. Holbrook where you discussed the matter of taking up timber and stone entries and where you insisted that they should be in every way legal and he guaranteed that the titles were right—that is the conversation I am speaking about—I think your direct examination when it is written out will show that you made a remark about like this; that I was satisfied with his explanation how the work would be done. What would you mean by that?

"A. I think that I said how the work was done or [827] would be done, because I do not have in mind when the conversation was, whether it was before or after the acquisition—I don't remember as a matter of fact, whether it was before or after or both, we discussed the thing; as a matter of fact I had had some experience with the taking up of lands and knew the title could be acquired by timber and stone entries that were perfectly straight, legal and honorable.

"Q. What did Mr. Holbrook say at that time?

(Testimony of E. S. Collins.)

"A. Holbrook said everything would be done straight and square and honest and legal and above board—I don't know how to put it.

"Q. Did you go into the details of the matter in the discussion? A. No.

"Q. The testimony has shown in a very general way I will state it, that a portion of these entrymen took up their lands we will say expecting that in the course of time they would sell them. They had heard about the general notion that the timber rights would be worth $100, and some of this information came from men like Mr. Heppe and maybe others, and then Mr. Tuman, as I remember that, entered into the matter of loaning money to those entrymen to make their final proof with; sometimes he took their notes and sometimes he did not; then after the final proof was made the land was purchased, and in many cases, perhaps a majority of the cases, $100 was paid for each claim over and above what the amount of this debt was—I am stating it to you in the baldest sort of way.

"A. Yes. [828]

"Q. Did you ever discuss such details as that with Mr. Holbrook?

"A. No, not at all; the only detail I discussed with Mr. Holbrook was whether the lands would be safe to the company if they were acquired through that way.

"Q. Through the base?

"A. In that way of taking them up.

"Q. By what way of taking them up?

(Testimony of E. S. Collins.)

"A. By lands that had been taken up by timber and stone entries. We discussed whether certain titles could be made good through state lieu and school land and so on; there were various ways under discussion of how we could get lands and Mr. Holbrook thought some ways of getting land would not be safe; he referred to swamp and overflow base or lieu, that it was not absolutely safe; as a matter of fact, he got very little title in that way, it was just in that way, it was not with reference to the manner of his having taken lands up or how they were to be taken up; but this was a matter whether these lands would be absolutely safe for the company to take; we wanted an absolutely good title, and in our discussions with Mr. Holbrook, Mr. Holbrook had the confidence of all of us, that he was a fair and square business man of very large ability, and we did not discuss with Mr. Holbrook, are you going to break the law in taking these up, because we thought he was above that, and we trusted him implicitly.

"Q. I want to get that entirely clear in my mind; of course, so far as Mr. Tuman is concerned, I suppose he had in mind the fact that it was then supposed that you could not [829] purchase or contract to purchase these timber entries before final proof—I understand the Supreme Court has declared otherwise—and that his method was to loan this money to these people, I have not any idea that he was doing it for an investment, but I suppose he thought thereby he would stand a good show

(Testimony of E. S. Collins.)

of getting the lands by purchase. Now, was anything of that sort discussed with Mr. Holbrook?

"A. Absolutely nothing. The point I wanted to know was whether these lands that the company might acquire of which had been acquired previous to this by these timber and stone entries, whether the company would be perfectly safe in doing that; or whether everything would be done so that it would bring no disgrace or notoriety or anything of that sort on the company; everything would be safe and above-board, and never cause and trouble of any kind. I discussed it long enough with Mr. Holbrook to be satisfied—I knew enough about the taking up of a claim, I knew that a man could acquire a title to land that had been taken up under the Timber and Stone Act legally and honestly—it would be absolutely safe beyond any question.

"Q. You did not give your idea of how it should be done? A. I don't think I did.

"Q. He didn't express any idea as to details of that sort? A. Not that I remember of.

Mr. PIER.—"Q. You say you are familiar with the taking up of land by the timber and stone method? [830] A. Somewhat; a little.

"Q. You know what the method is of going in and filing your sworn statement and then going up and making your proof, with your non-mineral affidavit and your proof witnesses, and paying your money at $2.50 an acre?

"A. Yes; I took up a stone and timber entry myself.

(Testimony of E. S. Collins.)

"Q. You took up one yourself?

"A. I took up one myself; yes.

"Q. You know the general procedure to take up land?

"A. I know the general procedure; I did know the exact details, but I have forgotten some of them now.

"Q. You know that the title acquired that way was a good title?

"A. I knew it was if it was honestly acquired.

"Q. If it was honestly acquired? A. Yes.

"Q. This conversation that you had with Mr. Holbrook about the acquiring of these titles related to the integrity of the title rather than to the legality, did it not? By that I mean to the manner in which it was acquired as against the title being a good title once it having been acquired—do you get my distinction?

"A. I am not sure that I do.

"Q. What I have reference to is this: that the conversation that you had with Mr. Holbrook related to the title being obtained legally rather than that a title could be obtained by that method? What I mean is this: you knew that a good title could be obtained under the timber and stone act?

"A. I did, yes, if the law is complied with absolutely [831] in letter and spirit.

"Q. If the law is complied with in letter and spirit that it can be acquired? A. Yes.

"Q. Then anybody looking over the abstract of the title could tell whether the law had been com-

(Testimony of E. S. Collins.)

plied with in letter, could they not—that is, you could determine whether or not the legal forms had been gone through to get the title?

"A. I presume so.

"Q. So that you knew you could get a legal title that way, that a patent could be issued from the United States that way, and a good title would come, and that the title would be evidence and would convey the legal title to the land?

"A. I presume so, if I understand your question, yes.

"Q. Why would you have reason to have any discussion with Mr. Holbrook as to the entries of these timber claims being gotten on the square and raise no scandal on the company?

"A. Because I knew some had not been gotten squarely in other places, in the State of Washington.

"Q. You knew up in the State of Washington that they had not been gotten on the square?

"A. I knew some had been.

"Q. That is, in which others had got others to go out and take up land for them?

"A. Yes. I wanted to be sure that nothing of that kind was done here. [832]

"Q. You discussed that with Mr. Holbrook?

"A. I cannot tell you the details of the discussion with Mr. Holbrook; I discussed it with Mr. Holbrook until I was satisfied in my mind that everything would be done fair and square and straight and stand all investigation and the title be good be-

(Testimony of E. S. Collins.)

cause it was obtained fair and square and above-board; and when I discussed it that far, and had his personal assurance that it would be done, having entire confidence in the man, his integrity and character, I dropped it entirely and we never went back to it.

"Q. Did he detail to you any procedure that could be followed whereby you could acquire a big belt of these timber lands lying together in contiguous positions—did he detail to you any method whereby you could acquire that land by this method legally?

"A. No, he did not. I did not think it could be done either, because when a fellow has got the land and owns it, he will sell it out to the highest bidder of those that want his land; if somebody would come along at any time before we had obtained the land and would have paid him $500 or $400 or $200 or $100 more, he would get the land; and that was one of the reasons why I was afraid of that procedure, I was afraid some other fellow would come along and get the land; I did not expect we would be able to get the land because I thought other parties would come along and the people would not sell, and I was objecting very much to that way of getting our land; if it could have been gotten by the forest reserve, it would have been better, because when the forest reserve was filed the thing was done; the other way, the men that owned the land would be liable to sell to anyone that came along, at the best price they could get. That was the principal rea-

(Testimony of E. S. Collins.)

son why [833] I was sorry we had to come to that way of getting the land, the way of getting any title."

I did not purchase any scrip at all during the year 1902 in connection with the Curtis, Collins and Holbrook Company that I recall of now. At that time scrip was worth in a general way about $5.00. I have never discussed with Tuman at all as to the method pursued by him and Holbrook in getting his lands. Possibly I know his method now by reading the testimony. There is a lot in the testimony that I never heard of before. I didn't know the way that they did. As early as 1902 on that trip to Deer Creek Meadows Mr. Tuman told me that he was interested in Mr. Holbrook's contract with my father and Mr. Curtis. At the time we made this trip down Deer Creek Canyon we had not assembled all our lands.

Redirect Examination.

Mr. Remick's mine or prospect was a copper mine.

Recross-examination.

A shaft had been dug in the mine somewhere from 20 to 50 feet and the work was old work. I was afraid to go down the ladder into the shaft. It was about half a mile or a mile from Taylorville in a northeasterly direction. [834]

Testimony of J. G. Curtis, for Defendants.

J. G. CURTIS, called as a witness for defendants, testified as follows:

I reside in Erie, Pennsylvania. I have been a resident of Pennsylvania for fifty years and am 83 years of age. I have been in the lumber business for 50 years up to within two or three years ago. D. G. Curtis is my son. I have known T. D. Collins, personally, probably 20 years, and his son E. S. Collins about 12 or 15 years. I knew C. H. Holbrook, Sr., in his lifetime. He is now dead. I knew him probably 20 years. I don't know the exact date I first met C. H. Holbrook, Sr., but it was in Warren, Pennsylvania. At that time we went into a deal, timber deal, with him. Before that transaction I had known T. D. Collins for quite a long time, and personally probably three or four years. I have known C. H. Holbrook, Jr., for probably ten or fifteen years. I did not know him at the time I met Mr. Holbrook in Warren, Pennsylvania. I met him subsequently. I have heard of the Curtis, Collins and Holbrook Company, a corporation, and am the Curtis referred to in that name. At the conversation, which I had with Mr. Holbrook at Warren, Pennsylvania, he wanted to sell us some land and we went on and made a deal with him and bought a tract of land that was in California, bargained for it. That deal included something over 40,000 acres. I think there was a writing signed at that time between T. D. Collins, Mr. Holbrook [835] and myself. After

(Testimony of J. G. Curtis.)

the writing was signed, Mr. Holbrook came back to California. After he went to California, the contract we signed was not exactly as he wanted it and he came back to Pennsylvania and made a new one. My memory is not very good for details.

Mr. SHURTLEFF.—"Q. I show you a document bearing date the 19th day of December, 1901, purporting to be an agreement entered into between Charles H. Holbrook of the City and County of San Francisco, State of California, as party of the first part and T. D. Collins and J. G. Curtis, of the counties of Forest and McKean, State of Pennsylvania, the parties of the second part, and ask you if that is your signature there (showing)?

"A. Yes, that is my signature.

"Q. What is the name that you point to?

"A. J. G. Curtis."

I am not familiar with the signature of T. D. Collins.

(The Master marks paper Defendant's Exhibit "A" for Identification.)

I could not tell you after reading it, whether this document, marked Defendant's Exhibit "A" for Identification was the first or second agreement to which I referred in my testimony. I have not seen that agreement since that date.

(After examining the agreement, the witness testified: "I think this is the second agreement.")

I had no further written agreement with Mr. Holbrook except that. I know of no modification of that agreement in any respect. [836] I have

(Testimony of J. G. Curtis.)

known Mr. Shurtleff ever since that contract was made. I know where Mr. Shurtleff had his office prior to the fire of 1906 in San Francisco. It was —I don't know the name of the street—Sutter Street; I know the location but I don't know the name of the street and number. I don't remember being in the office of Mr. Shurtleff and executing any modification of this contract, marked Defendant's Exhibit "A" for Identification. I could not say how long after the execution of this contract, marked Defendant's Exhibit "A" for Identification, I was in San Francisco. I think I came out that year. I have no recollection of the date. I did not make trips to California very often and I have no idea how long it was after December 19, 1901, that I came to this state. Those two agreements, the agreement that I was shown here and the agreement originally executed, between T. D. Collins, Mr. Holbrook and myself, are the only two that I can remember being executed. After signing this agreement of December 19, 1901, Mr. Holbrook returned to California, I did not return with him to California.

"Q. Subsequent to the date of this agreement did you have any further conversations with Mr. Holbrook touching lands? A. No.

"Q. Do you know the nature of the title to the first lands that were supplied under this agreement? A. They were scrip, I think. [837]

"Q. Do you know how much land was scripped?

"A. Something over 40,000 acres, I think.

(Testimony of J. G. Curtis.)

"Q. Do you know whether any further lands were supplied other than this 40,000 of your own remembrance—do you remember of any further land being taken up by scrip? A. Yes.

"Q. Do you remember how many acres?

"A. I don't remember exactly the number of acres.

"Q. Do you remember whether the Curtis, Collins aind Holbrook Company acquired any lands which had been taken up under what is known as the Stone and Timber Act?

"A. Whether any others were taken up?

"Q. Whether they acquired any lands that had been acquired from the Government under the Stone and Timber Act?

"A. I think they did.

"Q. Do you know how much of that was acquired? A. No, I don't.

"Q. Did you, yourself, ever have any discussion with Mr. C. H. Holbrook touching lands the title to which arose by taking them up under the Timber and Stone Act? A. I did not."

I have known George B. Tuman only a short time. I did not know him at the time I signed this agreement in Warren. I think I know the business relations which existed between C. H. Holbrook, Sr., and George E. Tuman. I don't know that they had any business relations, of my own knowledge. I don't think I have known Mr. Tuman over five or six years. I cannot tell you how long it was [838] after the agreement of Decem-

(Testimony of J. G. Curtis.)

ber, 1901, was made that I met Mr. Tuman. I have only known him for a short time. I never have discussed with Mr. Tuman the acquiring of the lands involved in these suits. I never had any contract with Mr. Tuman touching the purchase or acquiring or selling of lands. I know there was such a corporation as the Curtis, Collins and Holbrook Company. I was one of the original incorporators of that company. Other incorporators of the company were my son (D. G. Curtis), T. D. Collins and Mr. Holbrook, and I think E. S. Collins. I don't think C. H. Holbrook, Jr., was one of the incorporators; I don't remember about that. I know Moulton connected with the Bank of California, by sight. I am not personally acquainted with him. I think he was one of the incorporators of the Company. I was one of the directors of the Company and also a stockholder. I am not a stockholder of the Curtis, Collins and Holbrook Company at this time. I sold my stock out to T. D. Collins about seven years ago, prior to the fire. After I disposed of my stock I did not continue to be a director. My best recollection is that I ceased to be a director about seven years ago. I don't think the directors of the Company were changed any during that time while I was on the Board.

"Q. The directors of the Board were then yourself, T. D. Collins, E. S. Collins, D. G. Curtis, Irving F. Moulton, C. H. Holbrook, Sr., and C. H. Holbrook, Jr.

(Testimony of J. G. Curtis.)

The MASTER.—"He did not state that Mr. C. H. Holbrook, Jr., was. [839]

Mr. SHURTLEFF.—"That is right. I will withdraw him.

"Q. You think they were the directors that I have named? A. Yes.

I think there were six directors. I remember myself personally attending meetings of the Board of Directors.

"Q. Do you know Charles E Gregory?

"A. I do not.

"Q. Never saw him? A. Not that I know of.

"You never had any dealings with him?

"A. No.

"Q. That you can remember? A. No.

"Q. I have already asked you Mr. Curtis, if you had any written agreement with Mr. C. H. Holbrook touching the acquiring or purchasing of lands subsequent to December 19, 1901. I will ask you if you ever had any oral understanding or agreement or conversation with Mr. Holbrook subsequent to that date touching or concerning or relating to the purchasing of lands by you from him or the sale of lands in any manner or in any respect?

"A. He wanted to sell more land and we agreed to take more.

"Q. Was this before or after the organization of the Curtis, Collins and Holbrook Company?

"A. Afterwards.

"Q. Do you remember what that conversation was? [840]

(Testimony of J. G. Curtis.)

"A. I don't know exactly more than we were ready to buy more land provided we could get it with a good title.

"Q. Do you remember what Mr. Holbrook said at that time?

"A. I don't know; I know he wanted to get more land.

"Q. Do you remember whether the question of price was discussed?

"A. Seven dollars and fifty cents an acre, I think.

"Q. Did you ever have any conversation with Mr. Holbrook or talk with him or Mr. Tuman or with anyone touching or relative to any additional or increased price that you can remember?

"A. Well, there was a price named but I don't remember exactly the time, we agreed to pay a little more for the land.

"Q. Do you remember how much more?

"A. I don't know—about $2.50 an acre more.

"Q. Making it $10 an acre? A. Yes.

"Q. Can you state the substance of that conversation, can you remember what was said between Mr. Holbrook and yourself?

"A. I cannot; I did not have much of the details to do, my son looked after all that part of it.

"Q. Do you know what became of the lands which were acquired under the agreement of December 19, 1901, and lands which may have subsequently been acquired under this oral agreement or understanding that you say you had with [841] Mr. Holbrook—what became of those lands, where did they finally go?

(Testimony of J. G. Curtis.)

"A. They all went into the company and were sold.

"Q. Do you know when the lands went into the Company? A. No, I don't.

"Q. Who paid Mr. Holbrook for the lands which were acquired under this agreement of December 19, 1901, and under the oral talk or conversations that you have spoken of? A. How is that?

"Q. Whose money paid for those lands that were acquired?

"A. They were paid by the company.

"Q. Did the company pay for it in the first instance?

"A. That was got under that contract, do you mean?

"Q. Yes. A. The company paid it.

"Q. The Curtis, Collins and Holbrook Company?

"A. No, there was money deposited in the Bank of California to pay for the land.

"Q. Who deposited it?

"A. Why, we deposited it, myself and Mr. Collins.

"Q. Yourself and Mr. T. D. Collins.

"A. Yes.

"Q. Were those deposits made before or after the organization of the company? A. After. [842]

"Q. Are you sure about that, Mr. Curtis?

"A. The organization of the company.

"Q. Yes; you don't remember that date, do you?

"A. No.

"Q. It was August 15, 1902?

"A. The money was paid before that."

I don't know J. E. Remick sitting on Mr. Shurt-

(Testimony of J. G. Curtis.)

leff's right, here. I don't know Arthur Elam, John W. Aid, John H. Heppe, Alex Cameron, Fred Scott, Willard C. Brown, L. C. Remick, A. E. Head, L. A. Bunnell, L. W. Bunnell.

"Q. Do you know N. F.Golden, the timber cruiser?

"A. I might have seen him; I am not acquainted with him.

"Q. Do you remember now that you ever met him?

"A. Golden?

"Q. Yes.

"A. I think I met him, and I was introduced to him, and that is all."

I never had anything to do with him. I never discussed lands or timber matter with him. I don't know Robert C. Taylor, Edward L. Cooksey, John Huntington, Gertie Terrell, John Heppe, Rebecca H. Heppe, Henrietta Tuman, Reuban J. Mitchell, Jacob S. Aid, Elijah Taylor, Robert Charles Taylor, James D. Baker, Mamie H. Baker, Carry M. Allen, John L. Gray, M. J. Self, John Van Orum, Margaret J. Baker, George D. Gardenhire, Charles J. Monroe, William J. Gardenhire, Charles J. Allen, James D. Aid. I never heard of any of these persons, or any of the entrymen who filed upon any of the lands involved in this litigation. [843]

"Q. Did you ever have any conversation with Mr. Holbrook or with Mr. Tuman or with any person whomsoever, Mr. Curtis, prior to the time that you sold your stock to Mr. Collins concerning the manner or method under which these timber locations are made involved in these different suits? A. No."

(Testimony of J. G. Curtis.)

I don't remember or recollect of the board of directors of the Curtis, Collins and Holbrook Company ever taking any action concerning the purchase of lands by C. H. Holbrook or George Tuman for the company. I have heard that the United States Government charges that some of the timber entries which formed the basis of the title to some of the lands which were ultimately turned over to the Curtis, Collins and Holbrook Company were acquired through fraud. I have heard there has been some question about the title. I first heard of that a long time after I sold my stock to Mr. Collins. Prior to the time that I heard the Government was charging fraud I had never heard from any source that these lands had been taken up through fraud, or improperly taken up.

"Q. You are unable to state the date upon which these lands were turned over to the company—you don't remember? A. No, I don't remember.

"Q. Can you state now, who deeded them to the company, do you know? A. How is that?

"Q. Do you know now who deeded it to the company, who made the deed? [844]

"A. No, I do not.

"Q. Did you ever have any conversation or talk of any kind or character with C. H. Holbrook, Sr., or George E. Tuman or either or both of them touching or concerning the sale of land other than those concerning which you have testified to this morning.

"A. No.

"Q. Do you know, Mr. Curtis, why some of the

(Testimony of J. G. Curtis.)

deeds from the entrymen, the names of the entrymen who are defendants in these suits, the names which I have read to you, were kept off of the records?

"A. No, I didn't know that they ever were kept off the records.

"Q. Did you ever authorize or direct anybody or talk to anybody about keeping them off the records?

"A. Never.

"Q. As I understand you to say you did not know they were kept off the records? A. No, I did not.

"Q. Up to the time you conveyed your stock to Mr. Collins, had Mr. Holbrook or any other person ever discussed with you the matter of keeping these deeds of the different entrymen off of the record?

"A. No.

"Q. Mr. Curtis, do you know why the deeds made by the entrymen to this land were kept off of the record?

"A. I do not. I didn't know as they were kept off.

"Q. You didn't know as they were kept off the record. [845] "A. No.

"Q. Do you know, Mr. Curtis, why the title to this land that is involved in this litigation was taken in the name of Charles E. Gregory?

"A. No, I don't know anything about that."

When I met Mr. Holbrook in Warren, he was a stranger, and I entered into this contract with him at that time. I think I made some inquiry about Mr. Holbrook through agencies and so forth. My son made some inquiries touching Mr. Holbrook. I had a reference from him. He looked after all that

(Testimony of J. G. Curtis.)

detail. I don't remember about that. I don't remember Mr. Holbrook exhibiting to me any telegrams from Mr. Tuman at that time, prior to making the agreement. I don't remember ever seeing any telegrams from Mr. Tuman to Mr. Holbrook touching this land.

"Q. Do you remember Mr. Holbrook's discussing with you at any time as to whether or not there were any other persons seeking to purchase this land that he wanted to sell to you?

"A. He gave us that impression, that he had an offer from another party, and if we did not want it he had somebody else ready to take it."

I don't remember whether he gave us the name of the party or not. I know about the Pennsylvania Lumber Company. At one time I was interested in it. The Pennsylvania Lumber Company was not interested in any manner in the lands or properties of the Curtis, Collins and Holbrook Company. The Curtis, Collins and Holbrook Company was not in any [846] manner interested in the lands of the Pennsylvania Lumber Company. A couple of years ago I was interviewed by a person representing himself to be an agent of the Government, concerning these lands, in Ludlow, Pennsylvania, where I lived at that time. I don't remember his name. I don't think I signed any writing at that time. At that time we talked over about the lands, how they were taken up and so forth. I don't remember that anybody was present at that conversation. The conversation was only a short time, perhaps half an hour.

(Testimony of J. G. Curtis.)

Dan was not present. I don't recall what was said at that time.

"Q. Have you at any time, Mr. Curtis, either by yourself or in connection with any other person directed or requested Charles H. Holbrook or George E. Tuman or any other person whose name I have named to you this morning, to go out and purchase lands for you, to act as your agent and representative in doing it? A. No, I never did."

The money was deposited in the Bank of California by myself and Mr. Collins. I don't remember how the money was paid out, any of the details of that. I could not say how much money I personally put into the Bank of California. We put in enough money to cover the price of the purchase

"Q. How much stock in the company did you receive do you know?

"A. We were even partners to start in, Mr. Collins and I were.

"Q. I understand you to say, Mr. Curtis, that this land was finally turned into the Curtis, Collins and Holbrook Company? [847]

"A. Yes.

"Q. When it was turned in what did you get for your portion of the land turned in—did you get money or stock? A. I got stock."

Cross-examination.

Mr. PIER.—"Q. When you started out you state that you and Mr. Collins were equal partners in this venture, that is you assumed equal responsibilities with him under this contract? A. Yes."

(Testimony of J. G. Curtis.)

We each put out half the money and I got half of the stock that came to Mr. Collins and me under the contract. When the land was turned over Holbrook was paid.

Q. Under the terms of the contract you were to put up $200,000 in the Bank of California?

"A. Yes,

"Q. And the land was to be assembled there in the name of G. Howard Thompson. After the land was assembled in the name of G. Howard Thompson you were to pay Mr. Holbrook the remaining part of the purchase price, part of it in notes?

"A. I don't remember about that detail.

"Q. You don't remember anything about the details in that connection?

"A. No, my son looked after all that detail, I did not give much attention to it.

"Q. Did you ever go up to Plumas County to look at the land? A. I never did. [848]

"You never were out on the land of the Curtis, Collins and Holbrook Company at all? A. No."

I took up some timber land in that part of the country myself for the Pennsylvania Lumber Company. At that time I was a stockholder in that company. We heard about the timber up in there and what nice timber it was, and we went out there and saw it; there were a few Eastern people there who were interested and we went out and saw it, went up there and took up some. So we formed the Pennsylvania Lumber Company. The Donaldsons, who were friends by marriage, took up some land. They did

(Testimony of J. G. Curtis.)

not come out specially through our influence to take up the land. They did not hear of it altogether through me and my son. Perhaps a good many of them were influenced to come out and take up timber by us. At that time Mr. Collins was not interested in the Pennsylvania Lumber Company. He became interested in it some time afterwards. I don't know as there was any promoter in the case of the Pennsylvania Lumber Company. I don't know who was the first one to get us interested in it; my son and I were. We had heard about the lands up there in Lassen County before we came out to California, through a stranger who appeared to be acquainted up there and came out talking about the timber and land and so on. I don't recall his name. When the Curtis, Collins and Holbrook Company was formed I was one of the directors. I held no other official position. I was neither president, vice-president, secretary or treasurer. [849] At the time the Curtis, Collins and Holbrook Company was formed my son had a portion of the stock. He had a substantial interest in my share from the very beginning. I don't know how my son and I shared my interests. I had the major portion of the stock. My son occupied the position of treasurer of the company, to draw checks. The funds of the corporation were in the Bank of California. I presume I came out here during the years of 1903 or 1904. I don't remember any trips other than this first trip that I came out here when I signed this agreement with Mr. Holbrook. I came out on account of the Pennsylvania

(Testimony of J. G. Curtis.)

Lumber Company lands. If it had not been on account of the Pennsylvania Lumber Company I don't think I would have come to California.

"Q. Did you ever sit in the doing of business of the Curtis, Collins and Holbrook Company on the Board of Directors? A. I met with them.

"Q. About how much of the year 1902 did you spend out here, Mr. Curtis?

'A. I did not spend any time out here, I might come out here and be here a week or ten days.

"Q. You would come out here for a week or ten days?

"A. Yes, we had other interests in timber land in the meantime.

"Q. This land that you took up, you were going [850] to take up under this contract with Mr. Holbrook, you understand, at the time, was Government land?

"A. Yes, I understood that he had taken it from the Government.

"Q. What is that?

"A. I understood that he had procured it from the Government and could turn it over to us, whenever we had the money.

"Q. As you understood it, he would have to get the title to the land from the Government at the time by the scrip process, wouldn't he?

"A. I think so.

"Q. That is the contract called for the taking up of the lands, of the acquiring of forest lieu scrip, so-called, depositing it with the Bank of Cali-

(Testimony of J. G. Curtis.)

fornia, and then filing on these particular descriptions, or this particular Government land, and then giving that title in to G. Howard Thompson, did it not?

"A. I don't remember anything about that."

Mr. Holbrook thought there was something about the first contract that was signed that did not serve him just right. I don't remember what it was, exactly, the price and everything was not changed, but some of the details. I think something in the manner of handling of the property was the only thing that was changed. I disposed of my interest in the Curtis, Collins and Holbrook Company at one time to T. D. Collins. My reason for getting out of the Curtis, Collins and Holbrook Company was that we were interested in other property up in Eureka, redwood country, and we traded it; he had interests in [851] the same land up there and we traded ours for some other—some of it was cash and some of it was notes. We gave him all our interests in the one and he gave us all his interest in the other. That land is held in the name of the California Pine and Timber Company, a corporation, I think.

Mr. SHURTLEFF.—"Q. It is the Bayside Lumber Company.

"A. Yes, the Bayside Lumber Company. ,

Mr. PIER.—"Has Mr. Collins given up all his interests in the Bayside Lumber Company?

"A. He is out of it now, I think."

At the same time he bought the Pennsylvania

(Testimony of J. G. Curtis.)

Lumber Company. He was interested in the Pennsylvania Lumber Company before we separated our interests. I don't remember when he got his first interest in the company. Mr. J. M. Beamis, a moneyed man who lives in Warren, Pennsylvania, acquired 50,000 acres of land which he was to turn over to the Pennsylvania Lumber Company and which he refused to do. He later sold it to Mr. Collins and that is the way Mr. Collins got interested in the Pennsylvania Lumber Company. Mr. Holbrook never had a substantial interest in the Pennsylvania Lumber Company. He was not one of the original incorporators. A man by the name of Minkler cruised the Pennsylvania Lumber Company's lands. Mr. Tuman did not cruise any of that for the company. I did not know Mr. Tuman at all while I had an interest in the corporation. I never heard of any difficulty between him and Mr. Holbrook. [852] Mr. Holbrook and I disposed of our interest in the corporation about the same time. His reason for getting out of the corporation was that he didn't want his money tied up there where he could not use it and he wanted to have some good out of it while he lived rather than hold it in timber. I did not buy any of Mr. Holbrook's interests. I do not know how much was paid for Mr. Holbrook's interests. None of this land was turned over to me personally.

"Q. Do you know how the company received the deeds to the land—who received the deeds to the land for the company?

(Testimony of J. G. Curtis.)

"A. For the Curtis, Collins and Holbrook Co.?

"Q. Yes."

"A. They were placed in the bank in charge of Mr. Shurtleff here, I think.

"Q. The Curtis, Collins and Holbrook Company had an office up there near Mr. Shurtleff's office, did they not?

"A. Just across the hall.

"Q. Who had charge of that office, who was the Curtis, Collins and Holbrook man in charge of that office? A. Mr. Holbrook.

"Q. Mr. Holbrook? A. Yes, he was there.

"Q. Did Mr. Holbrook have any title of manager of the company?

"A. No particular title, no.

"Q. Who looked after the active part of the company after you formed it? [853]

"A. My son looked after it.

"Q. Your son, that is D. G. Curtis?

"A. Yes.

"Q. Was he out here in California much during that time? A. He was out here quite often.

"Q. Did you ever discuss with anybody the character of lands that were acquired by the Curtis, Collins and Holbrook Company?

"A. You mean the quality of the timber?

"Q. Yes.

"A. No particular man that I know of.

"Q. Do you know whether your son was ever out to look at the timber? A. Yes, he looked at it.

(Testimony of J. G. Curtis.)

"Q. He went out. Do you know when he went out to look at it?

"A. He was out several times.

"Q. Did you ever discuss with him about the quality of the timber you got?"

"Q. Do you know whether or not you got all the timber called for by your contract?

"A. We did not have any particular amount."

I don't know whether or not any of the patents to the lands were ever cancelled on the corporation. So far as I know, all of the lands that were originally deeded to the company, they still own, and so far as I know, they did own up to the time I parted with my interest in the company. The lands were never conveyed to me personally under this contract. The title never stood in [854] my name at all.

"Q. Do you know what kind of lands are involved in these suits? A. No, I do not.

"Q. What I have reference to is, do you know how the lands of the Curtis, Collins and Holbrook Company, how the lands were taken up from the Government that are involved in these suits?

"A. I don't know anything about that part of it.

"Q. You don't know whether those lands were taken up by scrip or by homestead entry, or by timber and stone entry or by mineral claims?

"A. I know some of it was taken up by scrip but the other details I don't know anything about.

"Q. Outside of the plan laid out in the original

(Testimony of J. G. Curtis.)

contract you don't know how else the company acquired any of its land?

"A. No. Mr. Holbrook was to deliver the lands, we did not know anything about how he got them or any thing about it."

I don't know how long it was before I filed on the timber land in Lassen County for the Pennsylvania Lumber Company that I came to California. I don't know whether I went to San Francisco before I went to Susanville to file on the lands or not. I don't know whether I was here when the Pennsylvania Lumber Company was formed or not.

"Q. Who did the financing of the Pennsylvania Lumber Company, do you remember that? [855]

"A. All of the individuals that took up the land furnished their own money, I suppose; there was not any general manager or anything of that kind.

I don't remember how much my interest in the Pennsylvania Lumber Company was. Under the first contract the Curtis, Collins and Holbrook Company acquired about 42,000 acres. I think they got about as much more land after that. Mr. Collins and I put up the money for the acquiring of those lands. In taking up the remainder of the land, Mr. Collins got the biggest part of it. He had the most money. I got stock whenever we put up money at par. I don't know how much stock in the company Mr. Holbrook got. I never kept any track of the details. I am a very poor hand to keep details anyway, or to recollect anything of that kind.

(Testimony of J. G. Curtis.)

"Q. As a matter of fact, the most of the handling of this business was in the hands of your son, of your interest? A. Yes.

"Q. And you, yourself, did not pay very much attention to it? A. No."

When we made this first contract with Mr. Holbrook, that was the first time I had ever met him, and it was out of this contract that the Curtis, Collins and Holbrook Company was formed. I became acquainted with Mr. Holbrook first. I don't remember exactly how he was introduced to me or who was his sponsor to me. He was down there [856] with the land for sale; he looked us up or we looked him up, I don't know which, but he came across us there, that is about the way it was; he had another man down there, too, when he came there, I believe, if we did not trade to suit him, and it was not getting along just right, to look outside for somebody else to take it up.

"Q. Do you remember who arranged the incorporation of the Curtis, Collins and Holbrook Company?"

"A. Mr. Shurtleff here, I think, had something to do with it."

I don't know who decided when it was time to form the corporation. I don't know how large an interest I had in the Pennsylvania Company at the time I sold out, nor how large an interest in the Curtis, Collins and Holbrook Company I had when I sold out. I did not have a controlling interest in the Pennsylvania Lumber Company at the time

(Testimony of J. G. Curtis.)

I sold out. I don't know whether I ever had a controlling interest in the Pennsylvania Lumber Company. I think at one time my son and I owned a majority of the stock of the Pennsylvania Lumber Company. My son had the checking out of the money placed in the Bank of California, as Treasurer of the Curtis, Collins and Holbrook Company.

Redirect Examination.

When I had this discussion with the Government agent, I think it related to the Pennsylvania Lumber Company lands. I don't think anything was said about the Curtis, Collins and Holbrook lands. [857] I think Mr. Collins is now out of the Bayside Lumber Company. I don't know. I am pretty sure Mr. Collins doesn't own it. I am out of it. I don't remember whether there were a large number of stockholders in the Pennsylvania Lumber Company or not. I don't remember much about that deal at all. I don't think Mr. Holbrook had any cruise with him of the property that he showed us that he wanted to convey to us, when he came back to see us in Warren. He might have had, I don't think I ever saw any. Mr. Bemis got his lands through the use of scrip. At the time I filed on the Pennsylvania Lumber Company lands I had no agreement with any of the other Pennsylvania people that located, that we were to form a corporation and transfer the land. There was no talk about it that I can remember of. I had no agreement with Mr. Donaldson and all these different people that I was to file on land and get

(Testimony of J. G. Curtis.)

it and then give it to the company. We decided to adopt the name of the Curtis, Collins and Holbrook Company at the time we organized the company. The Stearns are not related to our family; just friends. I believe one of them took up some land there and had an interest in the corporation as long as he kept it. I think there were thirteen of us that came out from Pennsylvania and took up land. Our purpose was to take [858] up the land and hold it.

"Q. Were you to hold it in the corporation, or were you to hold it in your individual names?

"A. In the individual names, if they wanted to."

I know Bradford C. Wilcox; that is all. I don't know Jay H. Van Buren, who lives at Erie. I know Byron Eldred. He is no relation of mine.

Recalled.

Witness was shown document bearing date the 23d of November, 1901, and identified J. G. Curtis, signed thereto as his signature. The Master thereupon marked document Defendant's Exhibit "B" for Identification. [859]

Testimony of D. G. Curtis, for Defendants.

D. G. CURTIS, called as a witness for defendants, testified as follows:

I reside in Erie, Pennsylvania, and have resided there for about six years. I have lived in Pennsylvania all my life, and am 41 years old. My present occupation is that of a timber man. I am the son of J. G. Curtis, who was on the stand this morning.

(Testimony of D. G. Curtis.)

I know Chas. H. Holbrook, Sr., and have known him since 1901. I know George E. Tuman, and have known him since 1903. I have known Chas. H. Holbrook, Jr., since early in 1902. I met him before I met Mr. Tuman. I have known T. D. Collins about fifteen years. I have known his son E. S. Collins about twelve years. I first met C. H. Holbrook, Sr., in Erie, Pennsylvania, in November, 1901. He was introduced to me by Curtis Johnson. In the latter part of November, 1901, I had some business transactions with C. H. Holbrook, Sr. Mr. Holbrook came to Erie to see Mr. Curtis Johnson whom he had met in California some few months before with the idea of interesting him and his associates in the purchase of some timber land which he hoped to acquire from the Government. I knew Mr. Johnson. When Mr. Holbrook got back there Mr. Johnson tried to interest some of his friends with him in the acquirement of this land, so I came to Erie to meet Mr. Holbrook, and the negotiations with Mr. Johnson fell through. He decided that he would not go on with the matter, and Mr. Holbrook was undecided what to do, whether to come back home or whether to go up into Wisconsin, and I asked him to come to Warren and meet my father and Mr. T. D. Collins and some of [860] our friends there, which he did, and that resulted in the signing of this agreement which was shown here this morning. I was present at the negotiations in Warren. I was present at all the talks between Holbrook and my father and T. D. Col-

(Testimony of D. G. Curtis.)

lins. Mr. Holbrook had a list of estimates on timber which he said was Government land and which he could acquire by filing forest reserve scrip. He showed that to us, and wanted us to raise money to buy the scrip with, and we would take the property at $7.50 an acre, he, of course, getting in profit the difference between the cost of the scrip and the $7.50 an acre.

"Q. That resulted in this agreement that you speak of? A. Yes."

Witness is shown Defendant's Exhibit "A" for identification.

That is my signature there as witness. I saw C. H. Holbrook, J. G. Curtis and T. D. Collins sign that instrument at the time it bears date. It was signed in my presence. There were two contracts made with Mr. Holbrook. The first one was made the latter part of November. Nothing was done under the first contract. Prior to making the first contract I made inquiries touching Mr. Holbrook as to who he was. He handed us the Bank of California as reference. I wired the Bank of California as to his standing here and received a favorable reply. At that time he said there were some other parties that he could do business with if we did not care to act quickly.

"Q. Do you know whether or not you received any telegrams in connection with that meeting? [861]

"A. My recollection is that he did say that he received a telegram or some word to the effect that a

(Testimony of D. G. Curtis.)

Mr. Rogers was ready to take the property if we did not want it, or unless we would act quickly in the matter.

He stated the price was $7.50 an acre which was the price he was asking. After the first contract was entered into Mr. Holbrook came to California and in a few days he came back. He said the first contract was drawn in such a way that he could not act under it and wanted us to sign a new contract. A new contract was signed as he wanted it. That contract is Defendant's Exhibit "A" for Identification. I don't think anything was done under the first agreement. I don't distinctly recall any modification or change made in the second contract. Defendant's Exhibit "A" for Identification. It seems to me there was something that he wanted changed but I do not recall about it. I don't recall ever having had a conversation or an interview with Mr. Shurtleff touching a change in the agreement of December 19, 1901. After the signing of the contract of December 10, 1901, Mr. Holbrook came out here and began the assembling of the lands. He made out arrangements for the forest reserve scrip and prepared to file it and did file it. I remember the details of how the forest reserve was to be paid for. Mr. Shurtleff was to pass upon the title to the forest reserve scrip and upon his certificate the Bank of California paid the money. My father and Mr. Collins deposited the money in the Bank of California for that purpose.

"Q. Do you know of any other written contract

(Testimony of D. G. Curtis.)

having been entered into by your father and yourself, T. D. Collins [862] and E. S. Collins with C. H. Holbrook, Sr., or C. H. Holbrook, Jr., or with George Tuman, or with any other person touching the lands that Mr. Holbrook was to furnish under this agreement? A. No.

There were further conversations by these various parties that have been named with Mr. Holbrook touching his acquiring of further lands. After this original contract was taken in Mr. Holbrook represented that there were other lands. I think that was shortly after. I don't remember just how long. I think it was before the Curtis, Collins & Holbrook Company was incorporated. I don't remember that anybody was present at that time. At that conversation Mr. Holbrook stated that there were other lands that could be acquired and he wanted to know whether we wanted to go on furnishing more money to buy more scrip and to locate the lands under the same arrangement as the original contract. I consulted my father and Mr. Collins and they agreed to go on and take more land, and the scrip was bought and filed and the lands acquired.

"Q. After that did you have any further conversation with him about furnishing land?

"A. Along toward the last, scrip was hard to get."

Mr. Holbrook said that good scrip was hard to get, he was having difficulty in getting it, that he had other lands cruised out and that entrymen were coming in there and filing on them, and he was very much distressed, but he said that he thought that those men

(Testimony of D. G. Curtis.)

would probably be willing to sell after they had acquired titles, and that [863] the probabilities were he could buy the land for about the same price that it would cost to scrip it; and he wanted to know if he should buy some of these lands that would be satisfactory to the company. I communicated with my father and Mr. Collins and they said that they would be willing to take any lands to which absolutely good title could be delivered, and would be willing to pay him the same price for them as they paid him under the forest reserve filing.

"Q. You say satisfactory to the company; was this conversation as to the furnishing of these lands —at that time was the corporation organized?

"A. When I say 'company' I don't remember whether the company was organized at that time or not, but I will say my father and Mr. Collins and the rest of us who were interested."

After that I had further conversations with him in relation to those lands, at least Mr. Holbrook said that he could acquire other lands but they would cost more money and asked me to get an authorization from my father and Mr. Collins that they would allow him $10 an acre instead of $7.50 which was finally agreed to. They consented to that at last. That was the last land I think that was bought from Mr. Holbrook. The organizers of the company and the parties who signed the articles of incorporation were T. D. Collins, E. S. Collins, C. H. Holbrook, Sr., C. H. Holbrook, Jr., and Irving F. Moulton of the Bank of California, my father and myself, seven of

(Testimony of D. G. Curtis.)

us. The same ones were directors. My father and I continued as directors until we sold our stock. I sold part of mine in June, 1905 and the balance in February, 1906. My father and I sold our stock to T. D. Collins. [864]

"Q. (Mr. SHURTLEFF.) What became, if you know, of the lands that were received by your father and Mr. T. D. Collins under this contract, and the verbal contract that you have been speaking of, where did they finally go, do you know?

Mr. PIER.—"I interpose an objection, it is assuming something not in evidence, that the lands were ever acquired by Mr. Collins and Mr. Curtis. Mr. Curtis this morning testified that the title to the lands never was in him.

Mr. SHURTLEFF.—"It doesn't have to be in him to be acquired.

The MASTER.—Read the question. (The last question repeated by the Reporter.) I suppose that objection is well taken. However, it is not intended to prove that fact, simply to describe the land, as I understand.

Mr. PIER.—"You might say what became of the lands acquired under this contract and the subsequent conversations.

The MASTER.—We will let it go; we understand it perfectly and I think the witness understands it. The question will be restricted to mean, of course, a description of the lands which were the subject matter of the contract; whether they were ever acquired by Mr. Collins or Mr. Curtis is an immaterial matter.

(Testimony of D. G. Curtis.)

Mr. PIER.—"That may be the real issue in the case.

The MASTER.—"It may very well be, but it is not proved in this way.

Mr. PIER.—"That is all right, if it is understood it is not proved in that way.

The MASTER.—"Read the question to the witness [865] again. (The last question repeated by the reporter.)

"A. They were taken in the name of Thompson of the Bank of California and were finally deeded over by him to the Curtis, Collins and Holbrook Company.

Mr. SHURTLEFF.—"Q. Were they all taken in his name, the lands acquired?

"A. I think all the lands acquired by the forest reserve were taken in his name.

"Q. For whom was he holding these lands?

"A. For whom?

"Q. Yes.

"A. For my father and Mr. Collins up to the time the company was organized.

"Q. Now, as to the lands taken up under the stone and timber act, at least the title to which was initiated under the Timber and Stone Act, pursuant to this agreement, touching which you have testified, and these conversations with Mr. Holbrook, do you know what became of those lands?

"A. They were finally deeded into the company.

"Q. Who had them deeded into the company do you know? A. Mr. Holbrook.

(Testimony of D. G. Curtis.)

"Q. Mr. Holbrook? A. Yes.

"Q. How did he have them deeded to the company? A. I don't know, I am sure.

"Q. Were they his lands at the time?

"A. Supposed to be his lands.

"Q. At the time he deeded them to the company?

"A. Yes the company was buying the lands from

[866] him.

"Q. Was the company buying the lands from him —was the company buying the lands?

"A. The company bought the land from Mr. Holbrook the same as they bought forest reserve land from him.

"Q. Did the company buy the forest reserve lands from Mr. Holbrook? Who do you mean by the company? A. I mean my father and Mr. Collins.

"Q. Don't say the company because that is confusing; we understand the company here in this examination is the Curtis, Collins & Holbrook Company. Who caused the lands that Mr. Holbrook had offered under this contract or had furnished under this contract and the conversations, to be conveyed to the Curtis, Collins & Holbrook Company?

"A. I did not catch the first part of that question.

"Q. Who caused the lands that had been acquired or offered or furnished by Mr. Holbrook under this contract of December 19, 1901, and these oral conversations which you have spoken of to be conveyed to the Curtis, Collins & Holbrook Company?

"A. My father and Mr. Collins.

"Q. Of whom did they acquire those lands?

(Testimony of D. G. Curtis.)

"A. Whom did my father and Mr. Collins acquire the lands from?

"Q. Yes.

"A. Mr. Thompson.

"Q. No, I mean the Stone and Timber lands?

"A. They acquired them from Mr. Holbrook.

"Q. Do you know whether or not any of those lands [867] acquired under this contract either as forest reserve or stone and timber were ever deeded to your father and Mr. Collins? A. No.

"Q. They were not, you say? A. No, sir.

"Q. Do you know what was the reason of that?

"A. Well, my father never owned them.

"Q. Who paid for them?

"A. My father and Mr. Collins, but Mr. Collins had as much interest in the land.

"Q. I understand that, but why were they never conveyed to them directly, and instead of being conveyed to them were conveyed to the company?

"A. They were conveyed to Thompson to be held until such time as a company should be organized to take title to them.

"Q. The agreement provided for the organization of a company? A. Yes."

I don't know to whom the stone and timber lands were deeded by the various entrymen. I have heard of Charles E. Gregory. I never knew him. I never met him to my knowledge. I do not know at what point of time the stone and timber lands were paid for. They were certainly paid for after final proof. I know Mr. Remick. I think I have known him

(Testimony of D. G. Curtis.)

since the summer of 1910. I did not know him prior to the time that I sold my stock to Mr. Collins. [868] I know A. W. Elam. I met him in the summer of 1903. I never discussed the lands covered by these different suits with him. I do not know Alexander Cameron, Fred Scott, A. F. Head. I know Lute Bunnell; I think I met him in 1904. I never discussed these timber lands with him. I know N. F. Golden, a cruiser. I think I met him about the time I met Mr. Tuman in 1902 or 1903. I never discussed the timber land with him. I know Mr. Tuman's mother, Henrietta Tuman; have known her only a couple of years. I do not know any of the entrymen who took up the lands involved in this litigation. I never discussed with any of them any entry they made upon timber lands. I attended the meetings of the stockholders and the directors of the Curtis, Collins & Holbrook Company.

"Q. Do you remember of any resolution or any action having been taken by that corporation looking to the purchase of lands by C. H. Holbrook, Sr., or C. H. Holbrook, Jr., or George E. Tuman for the company? A. No.

"Q. Do you remember of any resolution or any action having been taken by the directors or stockholders during the time that you were a director authorizing anybody to purchase any lands?

"A. No."

I looked after the details of the business for my father. I remember that the first remittance in payment for the lands was $100,000, and after that

(Testimony of D. G. Curtis.)

father and Mr. Collins contributed equally for any additional lands that were taken over from time to time as money was required. When the lands were conveyed to the company they received their payment in stock which was taken out at par. It was issued to them in accordance with the money that they had each invested. I received a certain portion of the stock [869] that was to go to my father, and E. S. Collins received a certain portion of his father's stock. C. H. Holbrook received some stock. It was turned over to him in pursuance of this arrangement and agreement. I should judge Mr. Holbrook received about 1/8 of the stock that was issued. The rest of the stock aside from Mr. Moulton's one share was owned by my father, Mr. Collins, E. S. Collins and myself. I think I first learned that the Government was claiming that the timber and stone entries involved in these different suits were illegal about the time the suits were filed. I had not heard of anything of that kind at the time I sold my stock to Mr. Collins. I was never interviewed by any government agent in connection with the Curtis, Collins & Holbrook Company's claims. I do not know why the deeds from the different entrymen to the lands involved in these 79 suits were kept off the records. I did not know they were kept off the records. I didn't know that the lands were assembled in the name of C. E. Gregory. Just the forest reserve land was assembled in the name of Mr. Thompson. I never knew anything about any of the lands being conveyed to C. E. Gregory. I don't know who signed

(Testimony of D. G. Curtis.)

the deeds which finally vested this land in the Curtis, Collins & Holbrook Company. I know of no reason why any of these deeds should have been kept off the records. I don't know whether or not the Board of Directors of the company during the time that I was a director ever took any action one way or the other or any directors personally took any action one way or the other touching the keeping of these deeds off the records. I did not meet Mr. Tuman in 1901. I did [870] not know that Mr. Tuman was interested with Mr. Holbrook, Sr., in the contract of December 19, 1901, and the verbal contracts made thereafter.

"Q. Did you, subsequent to that time, ever hear or learn from any source that he was interested?

"A. No.

"Q. I mean up to the time you disposed of your stock? A. Yes.

I never discussed with Mr. Holbrook or Mr. Tuman the manner of filings or the maner of locating these different lands involved in these 79 suits.

"Q. Did Mr. Holbrook, to your knowledge or recollection, ever at any time or in your presence explain to any other person or state to any other person, either the directors as a board assembled, or to your father or Mr. T. D. Collins or Mr. E. S. Collins anything touching the acquiring of these different lands and the location of them?

"A. No."

Cross-examination.

I think I first came to California shortly after

(Testimony of D. G. Curtis.)

January 1, 1902. I came to San Francisco to meet Mr. Holbrook. After meeting Mr. Holbrook I did not go up to look at these lands. I had been up through that country the year before with E. S. Collins. The two of us went up through Plumas and Lassen counties at that time, that is in 1901, to look over the country in a general way, so were familiar with the timber surrounding that country. At that time we came out on account of what afterwards became the Pennsylvania [871] Lumber Company. At that time we had the view of taking up the land. In 1902 I went up to look at the particular lands described in the contract that my father and Mr. Collins had made. I think E. S. Collins was with me on that trip and Mr. Holbrook. Mr. Holbrook took us around and showed us the land. I think Mr. Tuman was with him. I met Mr. Tuman probably in 1902. We stayed at Bunnell's Hotel. Mr. Tuman was staying there. Mr. Holbrook introduced Mr. Tuman as a cruiser. He stated that Mr. Tuman was cruising the lands for him. He treated Mr. Tuman as an employee. We thought at the time that Tuman was merely Holbrook's employee. We looked the lands over that were involved in the contract. We also traveled around through the country and looked the whole country over in a general way but not at any particular lands. I think we stayed at Bunnell's near Prattville about two days. We made a trip at that time down to Soldier's Meadows but did not go to Quincy. Soldier's Meadows is out back of

(Testimony of D. G. Curtis.)

Finanis' place; that is about west of Prattville toward the head of Deer Creek. You go on the back road to Chico toward Humbug Valley. We made another trip up the west side of the Big Meadows about 8 or 10 miles. I think we went back to Susanville. We came in from Susanville. I don't remember whether I was up there again that summer or not, but I think I was. I took up a timber claim in that vicinity that summer. I think I took that up on that trip, it was in August. My father at that time also filed on some land and my wife, Jennie E. Curtis. We all went up there at the same time on our way out before we came to San Francisco. We went in there from Reno on our way out. I don't think we had been to San Francisco before that. After filing on the land we came down here [872] and attended to some other business and then went back on our way home. My father and my wife and I came out to California at the same time. The Stearnses came out about the same time, also the Donaldsons. J. S. Curtis is my brother. There were two J. S. Curtises that filed. At the time we made our final proof we only stayed there a few days. My father took a trip with me out to Bunnell's. The old man Collins was not with us on that trip.

"Q. Did he go out to Soldier Meadows and these places?

"A. He was out to these places, I don't know whether it was on that trip or some other trip, but he was out there once with me."

(Testimony of D. G. Curtis.)

The old gentleman was out there two or three times. I was up there frequently. By old gentleman I mean T. D. Collins.

In August, 1902, my father was out there looking over these lands with me. None of the Curtis family stayed up there from the time they filed on the land until the time of final proof.

At the time the Curtis, Collins & Holbrook Company was formed I was elected secretary-treasurer. In making expenditures for the corporation I would sign the checks as treasurer and Mr. Holbrook as vice-president. Both signatures had to be upon them They were Curtis, Collins & Holbrook checks signed by myself as secretary and Mr. Holbrook as vice-president. The account was Curtis, Collins & Holbrook Company's. The moneys expended on behalf of the company were expenses in connection [873] with the affairs of the company and for the payment of lands. I do not remember the acquiring of these timber lands. I do not remember when I paid for the timber lands, as Mr. Holbrook would make up the memorandum of what lands he had acquired or what were to be turned into the company and the deeds and all, and turn them over to me; we would then draw a check to pay for them.

"Q. Were the deeds delivered to you?

"A. Well, they were laid on my desk to be checked. Mr. Holbrook had charge of the recording and all the papers because I was here only a part of the time, you know."

"Q. So when the deeds would come in why he

(Testimony of D. G. Curtis.)

would have them and he would bring them in showing that the deeds had been made to the Curtis, Collins & Holbrook Company?

"A. Check off the acreage and ask for a settlement.

"Q. He would ask for a settlement and you would write out a check payable to him?

"A. He would write out a check and I would sign it.

"Q. That is, he would bring in a list and you would simply check off the list with the deeds that he presented? A. Yes.

"Q. And then you would sign the checks?

"A. Yes.

"Q. Had the deeds been recorded at the time you gave him the checks for them?

"A. No, but they were supposed to be recorded at once. [874]

"Q. Now, when Mr. Holbrook was acquiring these lands was there any money ever advanced him for the purpose of covering the expenses?

"A. We never advanced anybody a dollar on anything.

"Q. You advanced the money to take up the scrip, you remember? A. We bought the scrip.

"Q. That bought the scrip?

"A. That was our scrip, you know."

There was no money put up for Mr. Holbrook to draw upon while I was away for the taking up of these lands. Mr. Holbrook had a salary, that was the only money he drew from the company.

(Testimony of D. G. Curtis.)

"Q. Mr. Holbrook then had no fund from the company? A. No.

"Q. How many of these deeds would he bring in at a time for you to turn over?

"A. I think only one deed—I don't remember about that.

"Q. You don't remember about that?

"A. No.

"Q. He would bring in a lot and you would check it off? A. Check off the acreage.

"Q. You would check off the acreage and then pay just according to the acreage?

"A. Yes. [875]

"Q. How often would these things happen, would he bring them in, say, every month?

"A. Most always when I would come out here.

"Q. How often did you come out here during that year—how often do you suppose you came out during that year?

"A. I could not tell; there was one year I was out here six trips; I don't remember whether it was that year or not.

The MASTER.—"Q. What do you mean by 'that year'? A. 1902.

Mr. PIER.—"Q. In 1902 you were out here about six times?

"A. No, I would not say that; I don't remember whether I was out here six or four or three; but I was out here as occasion required.

"Q. Do you know whether the patents had been given to the land that he deeded?

(Testimony of D. G. Curtis.)

"A. No, I do not.

"Q. As a matter of fact you left that entirely to Mr. Holbrook? A. Yes.

"Q. Now, was there any resolution of the corporation giving to your father and to Mr. Collins their first stock in the corporation in exchange for the land?

"A. I don't have any recollection of it, but there must have been something of that sort.

"Q. What I mean is, what you remember; you don't have any recollection of it at all?

"A. No. [876]

"Q. Do you have any recollection of a resolution authorizing you to pay the expenses, all the running expenses of the office—was there any such resolution as that? A. I don't remember it.

"Q. Do you remember any resolution covering the fact as to whether or not you were to pay for these lands that Mr. Holbrook would bring in the deeds for? A. No.

"Q. These timber and stone entries?

"A. I don't remember as to that."

In addition to the 42,000 acres taken up under the original contract I think some additional lands were acquired by the corporation, which lands were ready to be turned over when the corporation was formed. I think that was accumulated in the name of G. Howard Thompson. The treasury stock left in the corporation after disposing of the stock in accordance with the terms of the original agreement, was disposed of at par, and was taken out

(Testimony of D. G. Curtis.)

as additional money was needed. The money was put into the bank. It might have been paid to me and I put it in the bank. The money was put into the bank subject to the checking account of Curtis, Collins and Holbrook.

"Q. And yours and Mr. Holbrook's checks?

"A. Yes."

"Q. You stated that your father and Mr. Collins shared alike in the amount of money they advanced, and also under this contract Mr. Holbrook was to get 789 shares. Did Mr. Holbrook get the 789 shares called for by the contract? [877]

"A. I think he did.

"Q. Did he get any other stock thereafter?

"A. After that he got some more stock, but just how much I cannot say; he had a profit in these additional lands that were turned in.

"Q. And he would take part of his profit out in stock? A. Yes."

Under the original contract Mr. Holbrook got about one-fifth of the stock of the corporation. After that my recollection is that he got some more stock on the additional scrip lands that were turned in, and after that the lands that were acquired from him were paid for in cash. After the scrip lands were turned in he did not take any more stock. I don't remember when the last scrip lands were turned in. I don't remember whether we acquired more scrip after the corporation was actually organized. The Pennsylvania Lumber Company acquired very little land by scrip.

(Testimony of D. G. Curtis.)

"Q. How long did you continue to have charge of the disbursements as secretary-treasurer of the Curtis, Collins and Holbrook Company?

"A. I held the office of treasurer until we sold our stock.

"Q. Now, up to that time, had you ever found out or ascertained that any of the lands that you had purchased from Holbrook, that you did not get title to them? A. No.

"Q. You never ascertained that fact at all? [878] A. No.

The MASTER.—"Let me ask you a question, Mr. Curtis: Did you have the title passed on before you paid for the lands?

"A. We did on the forest reserve, they were all passed through Mr. Shurtleff, and during that time we got well acquainted with Mr. Holbrook and we had, all of us, implicit confidence in him and accepted most anything he said as all right.

Mr. PIER.—"Q. You just took Mr. Holbrook's word for the title on these timber and stone entries? A. Yes.

The MASTER.—"Q. Did I understand you further a little while ago to say that in paying for the scrip lands Mr Holbrook took part stock and part cash? A. For his profit.

"Q. For his profit, of course, because you furnished the cash to get the scrip—for these timber and stone entries which came in by deeds, you paid him in cash?

"A. Yes, he claimed that the margin of profit

(Testimony of D. G. Curtis.)

was so small that he could not afford to take any stock?

Mr. PIER.—"Q. That was his assertion at that time, he could not afford to take any stock?

"A. Yes, that is my recollection of it.

The MASTER.—"Q. These deeds that you speak of, what deeds were they; who were the grantors and grantees? A. I don't remember.

"Q. Do you recall whether they were deeds from the entrymen to Charles E. Gregory or whether they were deeds [879] from Charles E. Gregory to the Curtis, Collins and Holbrook Company?

"A. Whoever deeded to the Curtis, Collins and Holbrook Company were the only deeds I ever saw; I never saw any that were back of them.

"Q. That is to say the deeds in which the Curtis, Collins and Holbrook Company were the grantees?

"A. Yes.

Mr. PIER.—"Q. I take it then, from your answer to the Master's question just now that you never had heard of any of the entrymen in any of these particular cases at all? A. No.

The MASTER.—"Q. Did Holbrook make any explanation of the fact that the deeds came from Gregory, did he say anything about Gregory?

"A. No.

"Q. Did you note the fact that they were all from one person, or nearly so?

"A. No, I don't remember now."

I don't remember when the settlement between Tuman and Holbrook was made, but it was some

(Testimony of D. G. Curtis.)

years ago. It was after the title to these lands had been acquired. The conversation with Mr. Holbrook about the acquiring of additional lands and wanting to know if he could go ahead and get more scrip and if more money would be put up to acquire scrip was held with me in San Francisco. I could not fix the time but it was after we had gotten through with the first transaction. The second conversation about [880] the timber and stone entries was in San Francisco also. The conversation about the timber and stone entries was had right along shortly after the conversation I had with him in regard to the acquiring of the scrip lands. I do not know whether these conversations were before or after the Curtis, Collins and Holbrook Company was formed. It might have either been before or after. Mr. Collins took an interest in the Pennsylvania Lumber Company within two or three months after we began acquiring lands, almost at the beginning. He was in the California corporation when it was organized. Mr. Holbrook, I think, had an interest of one share only. At first he was in just for the purpose of organization. I took a trip up through Plumas county that year with Mr. J. M. Bemis. We got down as far as Bunnell's that trip. I don't remember whether Holbrook was with us on that trip or not. I think we met Tuman on that trip. I never employed Tuman for the Pennsylvania Lumber Company. He did no cruising for me on behalf of the Pennsylvania Lumber Company. I think he has cruised

(Testimony of D. G. Curtis.)

for the Pennsylvania Lumber Company since the burning of the records. If he cruised it at all, he cruised it for Mr. Collins. I probably had three trips into that vicinity during that year; one time in May about the time the Pennsylvania was formed, another time when I made my entry of the timber land in August, and another when I made final proof. When I made my final proof I only went to Susanville. [881] W. D. Minkler located me on my timber land, for which I paid him $50. He was paid $50 for each one of the locations that he made.

"Q. How far out from Susanville did he take you to show you your land?

Mr. SHURTLEFF.—"I don't see the object of this testimony.

The MASTER.—"I will sustain the objection.

Mr. PIER.—"The purpose is to show how much work it was for Mr. Minkler to show these pieces of timber land whether the charge was for work done, or whether or not this $50 was for knowledge."

. . . . . .

The MASTER.—"I do not see the materiality of it.

Mr. PIER.—"It would have its bearing on showing how much that knowledge was worth, showing whether or not these people in taking up the land, were under any obligation to Mr. Tuman for the work that had been given to them in showing them the various pieces of land.

The MASTER.—"I do not think that is going to be material in this matter."

At the time the Curtis, Collins and Holbrook Com-

(Testimony of D. G. Curtis.)

pany was organized I did not personally have a substantial interest in the company. Such interest as I had was my father's interest and my position in the company was merely to look after my father's interests. I acquired some substantial interest in the company from my father.

Mr. Holbrook sold out his interest to Mr. Collins in two deals, if I remember right. Part of his stock [882] he sold at one time and the balance at another, just about the same time that I sold out.

"Q. At the time the corporation was formed was there any voting agreement in the corporation?

"A. No.

"Q. That is any pooling agreement at all controlling the voting of the stock?

"A. The only agreement we had in relation to stock was that as long as Mr. Holbrook held any stock he should be a director.

"Q. That was the only control over the voting of the stock or voting of the directors?

"A. The voting of the directors, I remember a resolution that we had passed for Mr. Holbrook's benefit whereby they required six directors to pass anything.

"Q. Six directors to pass anything? A. Yes.

"Q. So that each interest represented there, Mr. Holbrook's interest, Mr. Collins' interest and Mr. Curtis' interest, you all had to combine and agree unanimously practically on a proposition before anything could be passed? A. Yes.

We sold our interest in the Curtis, Collins and Holbrook Company because Mr. Collins wanted to buy

(Testimony of D. G. Curtis.)

and we wanted to sell. We considered the timber business a splendid investment and were well satisfied with the property. At the same time we disposed of our interest in the Pennsylvania Lumber Company to Mr. Collins. We traded our Pennsylvania interest for Collins' Bayside stock. We sold our Curtis, Collins and Holbrook stock out for cash. [883] For some we got $150 a share and for the rest, $200 a share. The first sale was in June, 1905, and the $200 sale was in February, 1906.

"Q. Up to that time your father had put in dollar for dollar against Mr. Collins?

"A. Oh, no. At the last Mr. Collins put in more money, but it was agreed that Mr. Collins could put in this money and take stock for it at par."

Any stock that Mr. Collins got from the company, he got at par. I don't remember whether I ever saw the telegram in relation to Rogers, or whether Holbrook just told me about it. He did not tell whom the telegram came from. I never met Rogers but I knew who he was in a general way. He represented some Chicago people. I never heard of the Branleys nor that we had bought any land that had been taken up by them. I never heard of the Wheellockes. I never heard of the fact that the lands which we purchased from them, the Government refused to issue patents to, but cancelled the same after we had purchased them.

Redirect Examination.

"Q. (Mr. SHURTLEFF.) Mr. Curtis, do you recollect for a certainty that the moneys that were

(Testimony of D. G. Curtis.)

paid out for forest reserve scrip were paid out by checks signed by you and Mr. Holbrook?

"A. No. I think the forest reserve scrip was all paid through the bank; still I would not say positively as to that either." [884]

I am not positive in my recollection that Mr. Holbrook did not receive any stock on account of the price paid him for lands which came through the timber and stone entries. I knew that Mr. Tuman had some stock when the certificate was presented to me by Mr. Holbrook to transfer to him. I did not know whether Tuman had bought it or how he came to get it. The timber and stone entries which finally passed to the company, were paid for by checks of the Curtis, Collins and Holbrook Company. I don't know how otherwise he could have gotten the money.

"Q. Were your father and T. D. Collins to pay for this land to Mr. Holbrook or was the company to pay for it direct?

"A. If the company had been organized at that time, the company should have paid it direct."

The land was sold by Holbrook to the company.

"Q. What do you mean by the company?

"A. I mean if the corporation was organized at the time that title was acquired, which I cannot remember now—if it was, the company acquired the title from Mr. Holbrook.

"Q. Did the corporation, Curtis, Collins and Holbrook company ever have any arrangement with Mr. Holbrook touching the purchase of lands?

"A. Nothing only a verbal contract, if it had any.

(Testimony of D. G. Curtis.)

"Q. Did it have any verbal contract?

"A. Touching the acquirement of this land?

"Q. Touching the purchasing of lands from Mr, Holbrook. [885]

"A. We bought all of our lands from Mr. Holbrook.

"Q. I understand that, but did the corporation buy them or Mr. Collins and Mr. Curtis buy them?

"A. Mr. Collins and my father authorized the purchase of everything that was purchased.

"Q. Did they buy themselves?

"A. They never bought and took title to anything.

"Q. What was this contract here for then?

"A. For the acquirement of lands by Mr. Thompson for them.

"Q. You mean that they never took title, they never had it conveyed to themselves?

"A. Not to themselves personally.

"Q. But they paid for the land? A. Certainly.

"Q. What have you to say, Mr. Curtis, finally about this, did the Curtis, Collins and Holbrook Company ever make a contract with Mr. Holbrook?

"A. No, not any written contract.

"Q. Any kind of a contract for the purchase of any of these lands that you know of?

"A. We must have had some sort of an arrangement with him.

"Q. I am talking about the company now.

"A. I don't know.

"Q. You have testified here to a contract between your father and Mr. Collins and Mr. Holbrook?

(Testimony of D. G. Curtis.)

"A. Yes.

"Q. You have testified as to certain verbal arrangements that you had with them. The original contract [886] that you have seen here was between whom?

"A. Mr. Collins, Mr. Holbrook and my father.

"Q. In any of these verbal contracts that you had or conversations that you had were the parties to the contract ever changed A. No.

"Q. In what respect was the contract, if at all changed?

"A. I never discussed the contract with them.

"Q. I mean you had oral talks with them?

"A. Yes.

"Q. And those oral talks, according to your testimony, covered what—you have testified to two things, additional lands and the price? A. Yes.

"Q. Did they cover anything else?

"A. Not that I remember.

"Q. Is it or is it not a fact that these moneys would be advanced by your father and Mr. Collins in payment of these lands that were turned over by Mr. Holbrook and that for these moneys they would take stock in the company when the land was turned over to the company—is that the fact or is it not the fact?

"A. Yes, that is the fact.

Mr. PIER.—"I object to that as leading and suggestive. The witness has testified the money was advanced by the company and his father took stock in exchange for it.

The MASTER.—"I will allow it. It is sugges-

(Testimony of D. G. Curtis.)

tive [887] but I want to get at the facts. Read the last question, Mr. Reporter.

(The last question repeated by the Reporter.)

"A. Moneys advanced to Mr. Holbrook?

Mr. SHURTLEFF.—"Q. Paid to Mr. Holbrook?

"A. Before the title was acquired by the company, before Mr. Holbrook turned the title to us?

"Q. Yes.

"A. No, there was never any money ever advanced to Holbrook.

"Q. I mean there was money paid to Holbrook for all these different lands?

"A. After the title was delivered, yes.

"Q. Who paid it, your father and Mr. Collins, or the Curtis, Collins and Holbrook Company?

"A. I don't know."

Recross-examination.

I think substantially, that all the lands called for in the original contract, signed by Warren, Pennsylvania, were delivered by the purchase of scrip assembled in the name of Mr. Thompson. I don't know that the lands exactly described there were delivered. Over 42,000 acres were acquired through Mr. Thompson, acting under this contract, and delivered to the company. The contract was carried out substantially in its terms in all particulars.

Recalled.

I learned of the charges of fraud in connection with the lands involved in this litigation about the time [888] these suits were started. Prior to that time I had never known anything of the manner in

(Testimony of D. G. Curtis.)

which the lands had been taken up by the entrymen.

"Q. Can you state, Mr. Curtis, of your own knowledge, whether or not you or your father or T. D. Collins or E. S. Collins had anything to do with the field work or the work done in the acquisition of these lands? A. We never had."

The MASTER.—"Q. He asked you, Mr. Curtis, whether you knew that of your own knowledge, whether you could answer it of your own knowledge?

"A. Yes, I can answer it of my own knowledge, that none of us had anything to do with the field work."

I had a bank account with the Bank of California. None of the moneys that were used in the acquiring of the lands or properties of the Curtis, Collins & Holbrook Company ever went through my own private account. That account had nothing to do with the company. It was a private account of my own.

I was the treasurer of the company. I have no recollection of E. S. Collins ever paying in anything in connection with the acquisition of the lands of the Curtis, Collins & Holbrook Company.

Cross-examination.

I think it was after these suits were filed that I heard of the claim of fraud being made against these lands. I first met Mr. Holbrook on November 1, 1901. [889] I sold my stock in the corporation and resigned from the Board of Directors in February, 1906.

"Q. From November 1, 1901, when you first met Mr. Holbrook, up to February, 1906, what interest

(Testimony of D. G. Curtis.)

did you have with Mr. Holbrook, business interest, did you have any?

"A. I did not have any interest with Mr. Holbrook.

"Q. You and Mr. Holbrook were both interested in the Curtis, Collins and Holbrook Company?

"A. Yes.

"Q. You were interested in the Pennsylvania Lumber Company and Mr. Holbrook was one of the directors of the Pennsylvania Lumber Company at the time it was organized? A. Yes.

"Q. Was there any other timber operations or any other business operations in which you and he were associated together in any way during that time?

"A. Mr. Holbrook had something to do with some land in which I was to have a share of the profits along toward the end of, nearly to the time that I sold out my stock in the Curtis, Collins & Holbrook Company.

"Q. Where was that land situated?

"A. In Plumas County, I think.

"Q. Did Mr. T. D. Collins have any interest in that? A. No.

"Q. Did Mr. E. S. Collins have any interest in that? A. No.

"Q. Just you and Mr. Holbrook were associated together in that? A. Yes." [890]

I had interests with Mr. Collins in the Curtis, Collins and Holbrook Company and in the Bayside Lumber Company. At that time I had no other interest together with Mr. Collins during the time I was interested in the Curtis, Collins and Holbrook

(Testimony of D. G. Curtis.)

Company. We were interested in the Bayside together. Holbrook may have had one share of stock in the Bayside, simply to act as a director. He had no real interest in the Pennsylvania Lumber Company or the Bayside Lumber Company. Besides these three corporations, I had interests with Mr. Collins up to the time the Bayside Lumber Company was organized, in Trinity and Humboldt counties, which we carried on in the name of the California Pine & Timber Company, which was a corporation. The Bayside succeeded to the interest of that company. I don't think of anything else that I was interested in with Mr. Collins.

Mr. PIER.—"Q. When it came to this land in which you were to get an interest, was that land ever turned over to a corporation, that you were to get a part of the profits or?

"A. That land finally came into the Curtis, Collins & Holbrook Company. I don't remember just how.

"Q. That land finally came into the Curtis, Collins & Holbrook Company? A. Yes.

"Q. How much of that land was there?

"A. I think there was in the neighborhood of 10,000 acres. [891]

"Q. Where was that land situated?

"A. In Plumas County.

"Q. And what was your share of the profits?

"A. I don't remember now. They were so small they did not amount to anything.

"Q. Did you advance any money?

"A. No, I never advanced a dollar.

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(Testimony of D. G. Curtis.)

"Q. What was the basis for your being offered a part of the profits, what consideration did you give to Mr. Holbrook for being offered a part of the profits?

"A. I helped persuade my father and Collins to buy the land.

"Q. Was this timber and stone land?

"A. I don't remember whether it was or not.

"Q. You would not be certain about that

"A. No, I would not.

"Q. It might have been part of this timber and stone land?

"A. I think it was forest reserve land.

"Q. When did this take place? During 1902?

"A. I could not say. I have not thought of it since that until I came on the stand here."

Mr. Collins had some redwood interests in California, in which I was not interested. I never got any interest in those lands. The only redwood I was interested in with T. D. Collins was the Bayside Lumber Company. I did not know of any interest in which Mr. Collins and Mr. Holbrook had interests together, in which I was not interested. [892] I do not know whether Mr. Collins acquired any timber lands in California during 1902 besides the Curtis, Collins and Holbrook Company and the Pennsylvania Lumber Company. Mr. Holbrook sold out his stock about the time I sold the last of ours. The reason for the separation of the Curtis, and Collins interests arose out of some disagreement as to the competency of the management of the Bayside Lum-

(Testimony of D. G. Curtis.)

ber Company but it had nothing to do with the Curtis, Collins and Holbrook transaction.

"Q. Didn't Mr. Collins and you have quite a discussion in which there was some accusations as to confidences between you at the time that started the matter? A. No.

"Q. Didn't Mr. Collins accuse you of being either negligent in your handling of the Bayside or crooked in the handling of it? A. No."

. . . . . .

"Q. Or in any of those dealings up there through Humboldt County, in the timber dealings that you had with Mr. Collins?

"A. I don't remember any direct accusations. We had an exchange of opinions at the time we closed the Bayside deal. I don't remember what Mr. Collins said, nor what I said but it was a difference of opinion as to who should manage the Bayside property after we had acquired it. That was all. It was never brought up again." [893]

I never had an opportunity to sell my stock to Mr. Walker. Mr. Holbrook suggested that it could be sold to Mr. Walker. Mr. Holbrook did not try to get an option on my stock. Mr. Holbrook told me that if Mr. Collins did not care to buy his stock, he would sell it to Mr. Walker. Mr. Holbrook told me that he was in duty bound to first offer his stock to Mr. Collins, but if Mr. Collins did not care to buy it, he would sell it to Mr. Walker, but I had no interest in Mr. Holbrook's stock nor in the sale of it.

(Testimony of D. G. Curtis.)

"Q. Now, you sold your first stock for $150 a share and your second batch of stock for $200 a share. The first batch of stock was sold in June, 1905, and the next block in February, 1906?

"A. Yes.

"Q. That is about seven months' difference. Why was there such a difference in the price there in that seven months?

"A. I think the stock had appreciated that much in value, perhaps more."

I did not get cash for my stock; I took ten year notes. I am still holding the notes. The stock sold in June, 1905, was sold for notes. Likewise the stock sold in February, 1906. The family holds the notes. I don't recall any resolution being passed by the corporation for the purpose of the purchase of the land. I don't remember any resolution being passed by the corporation to take over the 42,000 acres.

"Q. Now, in your examination you stated that Holbrook, when you were on the stand before, something to this effect, I am giving it to you just to get the setting for my question, so that I am not trying to put words in your mouth, understand that; that Mr. Holbrook came to you and said that there was land that they had cruised that they [894] wanted to get and that entrymen were going in and settling upon the land, and he wanted to know if your father and Mr. Collins would stand for the corporation's buying the land or something to that effect.

(Testimony of D. G. Curtis.)

"A. He told me that he had a quantity of land cruised up there that he wanted to acquire for the company, and he was unable to purchase forest reserve scrip; the market seemed to be bare of good forest reserve scrip just at that time and he told me that entrymen were coming in and filing timber and stone claims on the land, and he seemed to be very much distressed about it, but he said, that no doubt these men would be glad to sell after they had acquired title and that probably he could buy the land later on for about what it would cost to scrip it; and I told him that I did not think that my father and Mr. Collins would care how the title was acquired so long as it was a good title from the Government; and later on I understand Mr. Holbrook did buy some of these claims.

Mr. PIER.—"Q. And they were sold to the company?

"A. And they finally came into the corporation.

"Q. Well, now, did you, as a result of that conversation with Mr. Holbrook, did he ask you to take this matter up with your father and Mr. Collins, or did he simply rely on your word in that matter?

"A. My recollection is that he said that this land would probably cost a little more money; that was one of the reasons later that he came to me and said that he would have to have $10 an acre.

"Q. Did you take this matter up with your father [895] at that time, or with Mr. Collins, about taking the land over?

(Testimony of D. G. Curtis.)

"A. No. I felt that at the time we had about all the land we could pay for.

"Q. At the same time you told him you thought that you father and Mr. Collins would not care how the land was taken up if it came to the company all right? A. Yes; that is right.

"Q. Mr. Holbrook was interested in finding out whether the company would take the land or not, was he not? A. Yes.

"Q. Was there any talk along that line as to whether the company would take the land?

"A. I don't think so just then.

"Q. When was this conversation, do you know, about how early it was—was it before or after the corporation was formed?

"A. It was before the corporation was formed.

"Q. It was before the corporation was formed?

"A. Yes.

"Q. Was there any other talk about this matter before the corporation was formed?

"A. You mean about these men coming in and locating on this land?

"Q. Yes, about taking the land that Mr. Holbrook would get from these timber and stone entries?

"A. I don't remember whether there was any more talk about it or not.

"Q. Did you have any talk with your father or Mr. [896] Collins before this question of $10 an acre came up?

"A. I don't remember any.

(Testimony of D. G. Curtis.)

"Q. You don't remember any? A. No.

"Q. Then the first talk that you had with your father and Mr. Collins was about the $10 an acre proposition? A. I think so.

"Q. What was the talk that Mr. Holbrook gave you at that time, what took place at that time?

"A. My recollection is that Mr. Holbrook said that he would be compelled to pay more money for this land, and that he would have to have $10 an acre; and I took the matter up with my father and Mr. Collins and at that time they agreed to pay Mr. Holbrook $10 an acre for such land as he would turn over after that date.

"Q. Where did you have that conversation with your father and Mr. Collins?

"A. Back in Pennsylvania.

"Q. Back in Pennsylvania? A. Yes.

"Q. Your talk with Mr. Holbrook was here in California? A. Yes.

"Q. Was E. S. Collions present at the time you had that talk with Mr. Holbrook? A. No.

"Q. Was he present at the time you talked with Mr. Collins and your father in the East?

"A. No. [897]

"Q. Did your father and Mr. Collins talk the matter over together, or did you talk to each of them separately about the matter?

"A. My recollection is I talked to each of them separately; you could hardly ever get them together.

"Q. And upon the statement that Mr. Collins would make to you and your father would make to

(Testimony of D. G. Curtis.)

you, you would go ahead and authorize Mr. Holbrook to take the land over? A. Yes.

"Q. Was this part of the transaction that you were to get a profit in the land for taking it over—were you to get a profit for the taking over of this land by Mr. Holbrook?

"A. I don't know whether it was this particular land. My recollection is that it was some $10 land that we bought from Mr. Holbrook.

"Q. Some $10 land? A. Yes.

"Q. You don't remember whether it was this particular land or not? A. No.

"Q. Did Mr. Collins at all hold out on the $10 an acre proposition? A. No.

"Q. He was perfectly willing to take it right up at that time? A. Yes.

"Q. And your father was also perfectly willing?

"A. Yes.

"Q. They both practically did it on your recommendation [898] A. Yes.

"Q. Did you ever meet Charles E. Gregory?

"A. Not that I have any recollection of; no."

I was the first to come to California after this original contract was signed with Mr. Holbrook. I think E. S. Collins came down from Oregon about the same time. T. D. Collins came out the next spring or summer. After the contract was signed I came out within a few weeks, a couple of months, something like that. Mr. Holbrook and I went to Mr. Singer's office, the attorney for the Southern Pacific Company. I don't know who was present

(Testimony of D. G. Curtis.)

at the conversation. I don't remember whether E. S. Collins was there. Mr. Chas. E. Swezy was there. There was some discussion on account of some defect in the title of the Southern Pacific Scrip so that Mr. Shurtleff would not pass it. Mr. Holbrook asked E. S. Collins and myself to authorize him to buy that scrip because he could not get anything else. We authorized his purchase of the scrip. I don't know whether that was on the first trip or not—it was along toward the beginning. I was in California in May, 1902, when the Pennsylvania Lumber Company was formed. I think I went into Plumas County at that time. I was also here when the Curtis, Collins and Holbrook Company was formed, in August, 1902. I remember making a trip with E. S. Collins, George Tuman, and C. H. Holbrook, Sr., over the proposed survey of the Union Pacific route. I don't remember whether that was in 1902 or later. [899] I don't remember going, during the year 1902, out with Mr. Collins to look at a mine of Mr. Remick's with an idea of purchasing it. The signature, D. G. Curtis, on the register of the Emerson Hotel at Susanville under date of July 11, 1902, is my signature. The same signature under date of July 16, is also my signature. Probably we had gone somewhere and come back again. At the same time I notice Bemis' signature. On that trip we went over western Lassen county to look the country over in a general way. I think we got down as far as Pratville and stayed there one night, although

(Testimony of D. G. Curtis.)

I could not say. Under date of August 5th, is my signature, my wife and my father also J. S. Curtis and the Stearns and Donaldson were there. The purpose of that trip was to file on timber lands. Before filing on the land we went on and looked at it. On that trip my father got down as far as Prattville with me. I don't think we got as far as Greenville. My wife was with me on that trip also. Mr. Holbrook's signature is in the register also, and D. G. Curtis and wife. Also my father's signature from Pennsylvania. I signed for my father. Mr. Holbrook had nothing to do with us when we were looking at the timber land in Lassen County. I think Mr. Holbrook was with my father and I when we went to Prattville for one day. After we registered on August 11th at the Emerson Hotel, we got through at Susanville and went down to Reno. Mrs. Curtis went direct home and I went to San Francisco, and was present before a notary on August 14th, so as to [900] sign the Articles of Incorporation of the Curtis, Collins and Holbrook Company. On August 22d, E. S. Collins, T. D. Collins and myself were evidently again in Susanville, as shown by the register of the Emerson Hotel. I don't recall going out to look at a mine on that trip with them. I don't remember going with them over to Taylorville. I used to meet Golden up there occasionally, but I don't remember any trip. Five days later I recognize my signature in Emerson Hotel. I don't recall that trip. I made so many trips up there I could not remember about

(Testimony of D. G. Curtis.)

them. Under date of Monday, October 5th, the name of D. G. Curtis appears again. I don't recall that trip, but I must have been there. I recognize in the register the signatures of J. S. Curtis and J. G. Curtis. These are the signatures of my brother and father. On October 16th, is my signature, D. G. Curtis and wife, which is three days after the other one. I think I met my father and brother up there at that time, which would be the time of final proof. My wife had been out here all the time, but had stayed in San Francisco. My wife and I stayed out here all the time between the time we filed on the land and the time we made final proof. Part of the time I was in San Francisco, and part of the time I was in the timber in Lassen and Plumas counties. When I was in San Francisco I had by business headquarters at 120 Sutter Street.

The signature, D. G. Curtis from San Francisco, under date of December 6th, 1902, in the Emerson Hotel Register, is mine. I don't remember that occasion. Before the contract was signed, in 1901, I was [901] through this country, Plumas and Lassen Counties, with E. S. Collins. I don't remember what month that was. I think I met him in Susanville. We drove over to Prattville and stayed at Bunnells. I don't think we got down as far as Quincy. We stayed at Bunnell's two nights. I don't think we met Tuman at Bunnell's. I think Minkler of Susanville was with us. On one of these trips into Plumas County we went in from Chico. I think I made one trip from Chico with E. S.

(Testimony of D. G. Curtis.)

Collins. I don't remember how many trips old man Collins made into Plumas County, but he was up there several times. We all respected the wishes of T. D. Collins when he was around in the administering of the affairs of the corporation.

"Q. As Mr. E. S. Collins states, he ran the business, he looked after his father's interest and his interest, that is the Collins interest, when his father was not there, and when his father was there his father was the whole show. A. Yes.

"Q. And he dominated things pretty much when he was around? A. Yes."

Redirect Examination.

This conversation in the railroad attorney's office in reference to the acquiring of forest reserve scrip with Mr. Singer and Mr. Holbrook, had reference to the acquiring of scrip under the December contract between [902] T. D. Collins, J. G. Curtis and C. H. Holbrook. (Exhibit "B" in evidence.) I am not certain that Mr. Shurtleff was not present. The 40,000 acres were turned over under this contract by Mr. Holbrook. I was not interested with Mr. Holbrook in this contract between Holbrook, my father and Mr. Collins.

"Q. The United States Attorney asked you this question: After referring to the interview that you had with Mr. Singer and the result of that conference which was that you decided to accept the title, he asked, did you authorize Mr. Holbrook to take that land for the company? What did you mean?

(Testimony of D. G. Curtis.)

"A. There was not any company then, he was taking the land for my father and Mr. Collins.

"Q. Was it not simply to indicate to Mr. Holbrook you would accept the title: Is that the fact about that? A. Yes.

Mr. SHURTLEFF.—Q. "Now, I understand you to say that you were to receive a certain portion of profits in some lands which subsequently came into the company and that that was $10 land? Is that your testimony? A. I think it was."

"Q. Do you know now, do you remember now whether or not that was the land or any portion of the land involved in these suits?

"A. I couldn't say whether it was or not.

"Q. When you took up with your father and T. D. Collins, in accordance with your statement to Mr. Holbrook, when he stated that he would have to have an increased price of $10 per acre, and that you would take it up with your father and Mr. T. D. Collins, you stated, I believe, that you dis so?

"A. Yes.

"Q. Can you state whether or not prior to your interviewing them, or either of them, they had heard anything about an increased price? Had they heard anything about that prior to that time?

"A. I don't know if they had; I don't think so. [903]

"Q. Did they say anything about that they had heard of it before, Mr. Curtis?

"A. No, they took it as a matter of course; land

(Testimony of D. G. Curtis.)

was increasing in value and they would have to pay more money.

"Q. That is not the question, the question is, were you the first to discuss that matter with them as far as you know? A. Yes, I think I was.

"Q. Was it taken under advisement by them or did they say immediately at the time that they would pay the $10?

"A. I think they decided practically at once that they would pay the $10.

"Q. Did you ever state to your father or to T. D. Collins or E. S. Collins, or Mr. Irving F. Moulton, or any of the directors of the company at that time anything about this share in the profits that you would receive from Mr. Holbrook? Did you ever, Mr. Curtis, tell them anything about it?

"A. I don't think so. The share in the profits in the transaction—

"Q. (Intg.) You say you don't think?

"A. No, I never told them anything about it.

"Q. What did you say about the share of the profits?

"A. I said the share of the profits was so small and the transaction was so insignificant I never gave it any further consideration. I think my share of the profits was [904] something like $200 or $300.

"Q. But I understand you to say that you had never discussed that feature with any of the directors of the corporation? A. No.

"Q. Did you ever go at the request of Mr. Holbrook or at the request of any other person either to

(Testimony of D. G. Curtis.)

your father or T. D. Collins or E. S. Collins or any other person with a proposition from Mr. Holbrook asking for an increased price of the lands other than this that you have just stated? A. No.

"Q. I understand you to say that whatever lands it might have been that your share in these profits was to be in the shape of a compensation for inducing your father and T. D. Collins to take the land that was then discussed? A. Yes.

"Q. And that that fact was not disclosed by you?

"A. No."

Recross-examination.

I don't know when the decision was made to pay $10 an acre for the land. It was before the corporation was formed. I don't remember as to there being anything said as to the amount of land to be taken at $10 an acre. [905]

Testimony of C. H. Holbrook, Jr., for Defendants.

C. H. HOLBROOK, Jr., called as a witness for defendants, testified as follows:

Am forty years old; reside in San Francisco and was interested with my father in the acquiring of the lands involved in these suits. I subscribed for sufficient stock to qualify as a director and at the time of the organization of the company, became a director and acted as such up to the time when my father and I sold out, which was in the year before the fire, 1905. Father made more than one sale to Collins of this stock. In attempting to sell the timber lands in Plumas and Tehama coun-

(Testimony of C. H. Holbrook, Jr.)

ties father made several trips east. His first trip was unsuccessful. He was accompanied on that trip by Mr. Golden. That trip was made in the summer of 1901. The second trip was made in the fall of the year. On the second trip he brought back with him a contract for the sale of certain timber lands. This contract contained something that made it almost impossible to fulfill, so I talked to father and he went down and consulted you (Mr. Shurtleff) and made another trip east in order to get it eliminated or changed in some way. Mr. Shurtleff prepared the second contract. The second contract was the one they operated under and that contract was fulfilled by the application of [906] forest lieu.

"Q. Was there any further contract, any further transactions had by your father in connection with the acquiring of any additional timber lands?

"A. Yes.

"Q. With whom was that deal or transaction had?

"A. I presume it was between my father and Mr. Collins and Mr. Curtis.

"Q. Well, you say you presume, what do you mean by that?

"A. Well, they were the only ones my father was dealing with, but I think he did sell some land on the outside.

"Q. (Intg.) What I mean is did your father acquire additional lands for either T. D. Collins, E. S. Collins, D. G. Curtis or J. G. Curtis, or any of those persons? A. Yes.

"Q. For whom did he acquire additional lands?

(Testimony of C. H. Holbrook, Jr.)

"A. He acquired them for himself and Mr. Tuman.

"Q. Originally? A. Originally.

"Q. Then what became of them?

"A. He finally sold them to T. D. Collins and J. G. Curtis and these lands afterward went into the Curtis, Collins and Holbrook Company.

"Q. Were any of these lands acquired through timber and stone entries? A. Yes.

One or two small parcels of land may have been acquired by scrip after contract exhibit "B" was filled out, but I doubt it. At the time father and Mr. Tuman began acquiring land through the purchase of timber and stone claims, scrip was very scarce excepting some Santa Fe scrip, [907] which after they had used a certain amount of it south of the 37th parallel, they were entitled to use a certain amount north of it and that scrip was $7.50 and $8.00. I went down to Los Angeles and Visalia to get some. But we got a large block of scrip. I presume we gathered three or four thousand acres in lots from 80 to 160 or 320 acres. Through Mr. Swezy we acquired some 40,000 acres of scrip from the Southern Pacific Company. There was some discussion as to whether the title to the Southern Pacific scrip was good. There was a conference between Mr. Singer of the railroad company, father, Swayze, Shurtleff, E. G. Collins and perhaps D. G. Curtis. Before Swayze came into the office telling them about this railroad scrip, father was in the frame of mind to throw up the whole deal. He thought it would be impossible

(Testimony of C. H. Holbrook, Jr.)

for him to fulfil it on account of the scarcity of scrip. He wanted to turn back to Curtis and Collins their money and turn over the three or four thousand acres of scrip we had acquired. In regard to the 79 entries involved in these consolidated cases, I had nothing whatever to do with the field work touching these entries except in buying the claims perhaps of three or four, the Carrie Ross and Elmer Ross claims. I think they were purchased after the company was organized. Elmer Ross was killed. I discussed with you (Mr. Shurtleff) about buying his claim. He was killed after location but before final proof and his widow went east. She was in New York when we bought from her. I never discussed with Geo. Tuman the facts or any of the [908] circumstances with relation to the acquisition of these lands.

"Q. Did you ever discuss it with your father?

"A. I may have discussed it with a great many people about stone and timber entries anything like that, but I don't know of any particular thing I discussed. I don't know of any particular thing, talking with the entrymen or anything like that.

"Q. Do you know whether your father prior to the proceeding to attempt to acquire some of these lands through the entrymen under the timber and stone applications had taken any legal advice? Consulted with anybody with relation to them?

"A. I am quite sure that he did with Mr. Swayze because I remember Mr. Swayze coming into the office with a decision which had been rendered by

(Testimony of C. H. Holbrook, Jr.)

some United States judge to the effect that a person could go into any community broadcast and advertise that they would buy stone and timber claims and would loan money and if my memory serves me right, that decision went on to say that borrowed money was your own or something about loaning money, borrowed money was your own.

C. E. Swayze was the attorney. Geo. E. Tuman was interested with father in acquiring these lands under the timber and stone act. I assisted my father in carrying on the operations. My father told me that if I would come in and assist him he would do the right thing by me. As compensation, I received shares of stock in the Curtis, Collins and Holbrook Co. [909] There were shares of stock which father had received under the contract with the company in relation to these lands in the acquisition of them.

"Q. How was your father paid, if you know, for these lands; I include now all the lands which were turned over ultimately to the Curtis, Collins and Holbrook Co.?

"A. He was paid by Mr. T. D. Collins and Mr. J. G. Curtis.

"Q. Do you remember how these payments were made?

"A. I presume they were made by check or by a deposit in the Bank of California.

Mr. PIER.—"Q. Do you know yourself they were?

"A. I know absolutely the first $200,000 was deposited in the Bank of California. In pursuance

(Testimony of C. H. Holbrook, Jr.)

of the contract and disbursed accordingly.

Mr. SHURTLEFF.—"Q. Do you know how he was paid for the lands that were acquired under the Timber and Stone Act?

"A. Money was deposited in the Bank of California.

"Q. By both of these gentlemen.

T. D. Collins and J. C. Curtis. I did not assist my father in any way in keeping his books and his bank account during this time. He was a very secretive man. I did not have charge of his check book. I may have written out checks and he signed them or something like that, but as far as having any access to his bank account, I had none. I know Frank Sorsoli, Edward Brase, and James Perini. [910] There were two or three or four claims that this Sorsoli got hold of or bought and the Curtis, Collins and Holbrook Co., or somebody, afterwards bought it from Sorsoli. They were paid direct the same as they did the Scotts and the Ross claims. I had the check that was used for the payment of the lands purchased from Sorsoli. I think it was a Curtis, Collins and Holbrook Co. check. I think the Scott's claims and Mrs. Ross' were acquired after the company was organized. I paid for these claims I am quite sure with company checks. I know Chas. E. Gregory very well, for probably 25 years. I met him with the Easton Eldridge & Co., real estate firm in San Francisco. The title to the lands acquired under the Timber and Stone Act were taken in his name. The Pennsylvania Lumber Co. had nothing

(Testimony of C. H. Holbrook, Jr.)

to do, either directly or indirectly with these lands. The lands were not deeded to Gregory for the use and benefit of the Pennsylvania Lumber Co.

"Q. Why were the lands conveyed to Gregory, Mr. Holbrook? Do you know? A. Why?

"Q. Yes, who had the interview with Mr. Gregory?

"A. I did.

"Q. State what it was.

"A. Mr. Gregory and I had been friends for years and on one or two occasions had held property for him in my name so I went to him and told him that my father was getting together some timber up north and we might want [911] to buy some land and put it in his name and he said anything I wanted to do was all right.

"Q. And that was done? A. That was done.

He was holding the lands for my father and Mr. Tuman. They were afterwards conveyed to the Curtis, Collins and Holbrook Company. I went to him to get the deeds signed. When the deeds would come originally from the entrymen to Chas. E. Gregory, probably they would remain that way until father sold them to Mr. Curtis and Mr. Collins or was paid for them and then the proposition would be made in writing by these gentlemen, Curtis and Collins, offering to convey the land to the Curtis, Collins and Holbrook Company for so much stock. The older Mr. Collins and Mr. Curtis were the men that advanced the money. I kept the records of the corporation. D. G. Curtis was secretary, also treasurer, and if the records had not been burned all

(Testimony of C. H. Holbrook, Jr.)

those different propostions would be in the minute book.

"Q. Outside of the Ross claims as to which you have testified and the purchase from Frank Sorsoli and the Scotts, do you know whether or not any of the claims of the entrymen were paid through or by the use of checks of the Curtis, Collins and Holbrook Company? A. I do not.

"Q. Were they used.

"A. No, no checks used.

"Q. Did your father know Chas. E. Gregory at the time you went with him?

"A. He probably knew him very casually as being a friend of mine and Gregory used to come in our office. [912]

"Q. What was the purpose of placing the title of this property in C. E. Gregory rather than in the name of your father?

"A. Father had been interested up in that part of the country for years, in fact, was married up there, and he had acquired a reputation as a large lumberman and a man familiar with lumber and as far as I know he wanted to keep the general public from knowledge of the fact that he was going to acquire a large body of timber so that he could get it at as reasonable a price as possible.

"Q. Do you know whether that was the result of any consultation or conversation with either T. D. Collins or J. G. Curtis?

"A. None whatever. That had nothing to do with it.

(Testimony of C. H. Holbrook, Jr.)

There was no reason to mention the Pennsylvania Lumber Co. to Gregory and I did not do so. Father was not financially interested in the Pennsylvania Lumber Co., his only interest was that of acting as a director as a matter of accommodation. I met N. C. Lawrence once. Lawrence sold father his claim and his entry was cancelled and the entry standing in the name of Lawrence. A notification of cancellation was mailed to Lawrence and Lawrence went to the land office and recovered the money which had been paid for the land and I went to get the money back. He said he got the money; he acknowledged having taken the money and that we could put him—he put himself in a criminal position for having taken it and said he would pay it. He was driving a logging team up there. I think he gave me $100 and gave me a note for [913] the rest, if I am not mistaken, the exact amount I would not swear to, but those are the general facts.

"Q. You say you think he gave you a note?

"A. Yes, I think he gave a note in my name, running to me—I am not sure, it was a long time ago.

"Q. Referring again to Gregory and the conversation that you had with him, did you state that the Curtis, Collins and Holbrook Co. were agents for the Pennsylvania Lumber Co.?

"A. Why, I could not state such a thing because that could not be possible.

I don't think that the Curtis, Collins and Holbrook Co. was in existence at the time I had my first

(Testimony of C. H. Holbrook, Jr.)

conversation with Gregory. I think the railroad scrip was about the last scrip that we purchased. The money paid under Exhibit "B" was paid out on the certificate of title signed by Mr. Shurtleff. C. H. Holbrook paid Mr. Shurtleff for examining the titles to the scrip lands. I think Frank Sorsoli was paid $10 an acre for the land held by him. Father was paid $10 an acre for land acquired under the application of timber and stone entries. He received that from Mr. Collins and Mr. Curtis. I was in the employ of the Curtis, Collins and Holbrook Co. I ran the details of this office and opened their books for them. My time was not exclusively theirs. [914]

"Q. Do you know whether or not your father ever purchased any lands for the Curtis, Collins and Holbrook Co. at any time acting for the company direct?

"A. Not that I know of. Do you mean in connection with any land? I went down to Honolulu and bought a section of land down there and father and I had a dicker over it and I finally sold it to him. I finally sold it to the company.

"Q. He represented the company in that?

"A. Yes.

"Q. Was that after or prior to the acquiring of these lands under the timber and stone act?

"A. I really think it would be after, the year I went to Honolulu in.

They belonged to a man by the name of Magoon. I was going to sell it to a man named T. D. Walker

(Testimony of C. H. Holbrook, Jr.)

but father thought I ought to turn it into the company and I did. It was a school section.

"Q. Do you know whether your father in negotiating for the purchase of any timber and stone claims acted as agent or in direct authority or in any authority from the Curtis, Collins & Holbrook Co.? A. None whatever.

Mr. PIER.—"Q. Do you know?

"A. I was around there, I would have known. I know as much as a man could know anything.

Mr. SHURTLEFF.—"Q. Do you know whether there was a resolution in the secretary's books authorizing any such thing?

"A. None whatever. [915]

"Q. Were you ever authorized? A. No.

"Q. You have testified that you think that your father sold out in 1906?

"A. 1905. Father sold out in February or March, 1905, and resigned his directorship shortly afterwards. He was not a director at the time of the fire.

J. G. and D. G. Curtis owned stock in the company and subsequently sold it to T. D. Collins. My impression is that they sold before father and I did. I do not think that they sold more than a year before we did. I sold my stock to T. D. Collins. I had about 150 shares. I sold 50 shares which I got from father and later I got 100 more which I sold when father sold out. Mr. Shurtleff examined the title papers to the lands at the time father and I sold out to Mr. Collins. I submitted

(Testimony of C. H. Holbrook, Jr.)

all the papers to you which were in the possession of the company touching the title to the lands. Examination of these titles came about in this way, that father was dickering with Collins to try to sell out to him and after they had come to some kind of a tentative understanding about it, Collins wanted a report on the titles of all the different lands and that was made in writing by you. I did not know the circumstances under which the lands were taken up so I could not have discussed those facts with you. After this report was made father sold to Collins; probably during the whole of the time father was connected with the corporation he owned about 900 or perhaps 1,000 shares of stock. At the time the Curtises and father sold their [916] stock I should say Collins had control of the company. He was always a great man to try and get the control. Tuman was always interested in the stock acquired by father. This was not known from from the start. He and father got into some difficulty or some misunderstanding and he sued father.

"Q. Well, now, did you and your father at any time ever own as much as 20% of the subscribed or issued stock of the company? A. No.

"Q. You can't state, I suppose, about what percentage it would be, 10 or 15%?

"A. That would be only a supposition, it is almost impossible to answer that.

"Q. Did you ever know, Mr. Holbrook, of any contract or understanding between the principal stockholders of the Curtis, Collins and Holbrook

(Testimony of C. H. Holbrook, Jr.)

Co. touching the sale of stock, that one would not sell without giving the other a chance?

"A. That was covered, I think it was covered in that agreement—it was covered by the by-laws of the company—I mean it was covered in that agreement.

I know there was something of that kind. There was some provision made in the by-laws whereby required father's stock to change the by-laws. Father had this inserted for the purpose of protecting himself, as a minority stockholder. In case any party wanted to sell there was the understanding that they would first offer whatever stock [917] they wanted to sell to one of the others upon the same terms and that they would have the option to buy it upon the same terms and conditions as could be obtained from a buyer on the outside. I know T. B. Walker. Father was trying to sell the whole property or assets of the Curtis, Collins and Holbrook Co. to Mr. T. B. Walker with a view of getting as high a price as he could for his own stock, and I think Walker at one time would have paid a certain price per share based on a certain price per acre. The price under discussion was $25. It was never consummated for the reason that Collins would not sell out and that was the argument father used in geting Collins to buy him out. Father went to Collins to sell his stock. I wrote him about mine. I never discussed it with him verbally.

"Q. Do you know whether or not T. D. Collins

(Testimony of C. H. Holbrook, Jr.)

was particularly active about purchasing your father's stock? Was he desirous to do it?

"A. Well, I think that if the price was right he felt that he had no right to keep in the company if the company could be bought as a whole, which Walker would have bought.

At the time father started out on this land deal he was broke. At the time father finally sold he had no particular assets excepting those derived out of the Curtis, Collins and Holbrook Co., which he had made out of Mr. Collins and Mr. Curtis. When the Curtis, Collins and Holbrook Co. was finally organized its moneys were deposited in the bank [918] of California and were checked out upon checks signed by D. G. Curtis and my father. I don't think I ever discussed with T. D. Collins the manner of the placing of the applications for the acquiring of stone and timber entries involved in this litigation prior to the commencement of these suits. Father died February 22, 1909, or 1910. I don't know when father stopped taking stock on account of the lands turned in by him. I think Mr. Curtis must be wrong about that (that father ceased to take stock in payment for lands when he ceased to turn in scrip), for I think father probably got some of the other lands because he could not have *have* so much stock if he did not. The price was raised from $7.50 to $10 an acre some time in 1902. I heard several conversations between D. G. Curtis and father here in the office about the raising of the price. I think father said he could not

(Testimony of C. H. Holbrook, Jr.)

furnish any more land at $7.50 an acre.

Mr. SHURTLEFF.—"Q. Do you know anything, Mr. Holbrook, about the delivery of the deeds, that is the deeds that Gregory might execute to the company? A. Yes.

"Q. What was done with them, who received them? A. I did.

At the time father and I ceased to be directors of the company all the records and papers and books of the company were turned over to you. (Mr. Shurtleff.) The Curtis, Collins and Holbrook Co. still retained an office at 120 Sutter Street, immediately across the hall from Mr. Shurtleff's office. After father and [919] I sold out we continued to occupy that office for a while.

"Q. After the incorporation of the company, did your father continue his relations with the company, that is looking after its affairs, that is assisting it after the incorporation of the company?

"A. Yes.

"Q. Do you know whether or not he received any compensation? A. I do not think so.

"Q. Did your father represent or have any other transactions with Mr. T. D. Collins or E. S. Collins or D. G. Curtis, or J. G. Curtis, with either or any of them other than the transactions—

"A. He may have had with D. G. Curtis. They had no reference to land matters.

None of these gentlemen ever authorized my father to represent them as agent in the purchase of any land or me either. I was associated with

(Testimony of C. H. Holbrook, Jr.)

and in the employ of my father during the time that we were acquiring these lands and up to the time the title passed to the company. The special agent of the Government has interviewed me in regard to my own entry, which is not involved in this suit. This interview was had since the fire. I was familiar in 1901–02 with the laws governing the acquisition of land under the Timber and Stone Act. My understanding at that time was that no agreement of any kind or character could be made with the entryman prior to the time of his final proof. I have heard of Frank McManus. I have never seen the man or had any business whatever with him. [920] I don't know the exact date the name of Curtis, Collins and Holbrook Company was decided upon for the corporation. I don't know whether there was much discussion about it or not. There were three fathers and three sons and they wanted to keep the names in the company in some way. I don't know that father ever had any business dealings with Jack Heppe. Heppe once wired father for some money but father never replied to it in any way. Father might have hired Heppe to watch fires in the forest as a caretaker. When the land is entered it is reported or is supposed to be reported from the Land Office to the county assessor. If the lands were upon the assessment-roll the taxes were paid upon the lands. Prior to the fire, or say prior to the commencement of these suits, I never discussed with T. D. Collins, E. S. Collins, J. G. Curtis, D. G. Curtis or Irving F. Moulton

(Testimony of C. H. Holbrook, Jr.)

the method or manner of acquiring these lands under the Timber and Stone Act, that is, what the entryman did or who asked him to go I never discussed with any of the entrymen who took up the lands involved in these suits how any of the various entrymen in this case took up their lands. I just bought the lands of the Scotts; I had nothing to do with their entries.

Cross-examination.

During the summer of 1902 I spent practically the whole summer in Plumas County at Bunnell's Hotel. My father was also there a good part of the summer. I was not present at the interview in Singer's office. I only saw them leave the office to go over there and I presume that they went. [921] Mr. Shurtleff refused to accept the responsibility of passing the scrip obtained from the Southern Pacific and the scrip was accepted over his protest by my father and Mr. Collins and Mr. Curtis. I did not see the money paid by the Bank of California for the scrip. I probably handled the check or had it certified or something like that.

"Q. Was it the Curtis, Collins and Holbrook Co. check?

"A. Yes, I don't know whether it was a Curtis, Collins and Holbrook check, I don't know whether the company was organized then.

We used to go to the Bank of California with a certificate of title from Mr. Shurtleff and they in turn would give a cashier's check payable to who-

(Testimony of C. H. Holbrook, Jr.)

ever the certificate might authorize, the same as a certified check or a bank check.

"Q. Mr. Shurtleff would give a certificate even if he refused to pass the title for the scrip?

"A. No, he would not.

"Q. There must have been a lot of this scrip paid for before there was any certificate from Mr. Shurtleff?

"A. No, not at all; because there were titles that were bought under the forest reserve and Mr. Shurtleff had to pass the title to the base land.

"Q. He refused to accept the title to this railroad scrip?

"A. He refused to assume the responsibility for it.

"Q. But he gave a certificate for it nevertheless? [922]

"A. There was some way money had to be gotten out of the bank, and the railroad had to be paid for the scrip and they were paid for it, and we got the scrip. Now, the manner of doing it or how the money was paid, I don't know.

It was gotten out in some way. We had to live up to the contract. There might have been some arrangement made in order to buy the scrip; I could not tell you how it was done. I cannot tell you the year when I had the conversation with Bill Lawrence about the money, but it was whenever he received the money back from the Land Office, that is the best record. It was after the entry was cancelled. I asked him for the money that he had re-

(Testimony of C. H. Holbrook, Jr.)

ceived from the land office and he acknowleged having received this money and said that he had spent it.

"Q. He had received the money and spent it?

"A. Yes, and I told him that he had laid himself criminally liable.

"Q. Criminally liable for what?

"A. For taking that money that did not beong to him.

"Q. For taking money that did not belong to him?

"A. Certainly.

"Q. That is, that money was your own money?

"A. Well, it was not my own money.

"Q. It was your father's money?

"A. He had paid him for the land.

"Q. You made the statement that he was criminally liable for taking the money? [923]

"A. Yes, or had put himself in an unpleasant position.

"Q. Didn't you tell him that you people could put him over for it?

"A. I don't know as I ever used that expression to anybody. I might have said he had put himself in an unpleasant position, or had put himself in a position where he could be criminally prosecuted; I might have used something like that.

I do not know that my father knew his father. I guess I got it from the land office or somewhere that he had the money. I don't remember where I heard it. I guess my father told me to go and get it. I don't remember any conversation with my father about it. I might have assumed the responsibility

(Testimony of C. H. Holbrook, Jr.)

myself. I must have heard about it after he got the money back from the land office. I do not remember whether I asked for an order permitting me to go to the land office and get the money stating that the entry had been canceled and the money was to be returned. I might have done that. I asked him for the amount of money that has been paid by the land office to him. It was in the neighborhood of $300 or $400. I asked him for the money he had received from the land office. That was all I claimed was coming to me and I claimed he was criminally liable for keeping that money and not returning it to me. Nobody advised me that he was criminally liable. That was my own idea, the same as if I sold a man a piece of land and I defrauded him out of the money. That $400 was not my money, it was my father's. [924]

"Q. Your father always considered the money as his money, the money paid to the land office?

"A. Lawrence paid for the land and he must have paid the Government $2.50 an acre for the land; when father bought the land from him father must have paid him a price in excess of that. He may have paid him less for all I know. Then when this entry was canceled the land belonged to my father. Now, then, the money should have come back from the land office to my father, but the entry being made in Mr. Lawrence's name I presume the notification was sent to Lawrence about getting the $400. I don't know that Lawrence admitted to me that he was criminally liable. My recollection is now that

(Testimony of C. H. Holbrook, Jr.)

he gave me $100 in cash and gave me a note. I gave the note to my father. I think the note was drawn in favor of my father. I don't know what became of the note. I gave the $100 to my father. Gregory executed the deeds to the Curtis, Collins and Holbrook Co. and delivered them to me. I took the deeds to him to have them signed, having theretofore prepared them.

"Q. When you received the deeds you would take them in and show them to Dan Curtis, would you not?

"A. Not necessarily. I don't know that Dan Curtis was here all the time; in fact, he was not here but a very small part of the time. Sometimes he would stay here for a month or two and then go east and stay for three or four months. Mr. Curtis would sign a great many checks in blank and the checks would not be good until they were signed [925] by my father.

"Q. By your father?

"A. Yes, so he could go east, he signed the blank checks and if we wanted one to use, my father had to sign it.

"Q. When these lands were received from Gregory, when these deeds were received, then your father would get the pay for the land, would he not?

"A. I guess he would.

"Q. That is, you would take them over and check them up and find out how much there was coming for the land and then fill in the check for the amount of money?

(Testimony of C. H. Holbrook, Jr.)

"A. I don't know as it was done that way.

"Q. Well, now when you were paid for the lands, didn't Mr. Dan C. Curtis always draw the check that paid for the land?

"A. I think that all these lands were a transaction between my father and Mr. T. D. Collins and Mr. J. G. Curtis.

"Q. When would your father receive the pay for these lands?

"A. After he would accumulate a certain batch of land he would say, he would probably say to them, 'I have got some land that I will sell you,' or something like that.

"Q. You were never present when your father and Mr. T. D. Collins and Mr. J. G. Curtis closed up the transaction—you were never present at any of those times?

"A. I was present all the time there in the office, but I can't recall any particular time.

"Q. Were you present when these lands were [926] transferred?

"A. I was present because I made out the deeds and took them over to Mr. Gregory to sign, and then I furnished Mr. Shurtleff with the descriptions—whenever Mr. Collins or Mr. Curtis would make a proposition to the company that they were in a position to turn over so much land or deed so much land to them, I would furnish Mr. Shurtleff with the data to get up the resolution.

"Q. Was your father ever paid for these lands before Mr. Gregory signed the deeds?

(Testimony of C. H. Holbrook, Jr.)

"A. I can't tell you that. I can't tell you the particular time that Gregory signed the deeds and the particular time my father was settled with.

I don't think my father would have turned any land over to Mr. Collins and Mr. Curtis unless he had been paid for it.

"Q. Would they pay him for the lands before he would turn over the deeds?

"A. I can't tell you that. He might have got some money from them but I can't tell you anything about the particular time of any particular transaction.

"Q. So that is a matter you don't know the particular way in which the matter was handled, the details of it?

"A. Except that my father made the deal with Mr. Collins and Mr. Curtis, and he was making what money he could out of the transaction; he commenced with giving them a good value for what they had paid.

I do not think father was paid with the check of [927] the Curtis, Collins and Holbrook Co. If he had had any big checks I would have known it myself; if any big checks had been issued for I drew all the checks, most of them, and all there were for office expenses and things like that.

"Q. Did you see any big checks signed by T. D. Collins given to your father?

"A. No, because Mr. Collins always did his business with the Bank of California. Now when he bought father out he might have given him a big check and I don't know that I saw it or not but my

(Testimony of C. H. Holbrook, Jr.)

father was rather a peculiar man, and if he got a big check he kept it to himself.

I never saw a big check to my father from J. G. Curtis, I never saw a big check from the Curtis, Collins and Holbrook Co. to my father. I would get the deeds from Gregory and was custodian of the deeds on behalf of my father up to a certain time; then when they were turned over they were turned over to the safe deposit where the papers of the Curtis, Collins and Holbrook Co. were kept. I was the only one that had access to the papers of the Curtis, Collins and Holbrook Co. and was custodian of the papers of the Curtis, Collins and Holbrook Co. excepting those that might have been in Mr. Shurtleff's office. Part of the time I was custodian of the deeds for my father and part of the time on behalf of the Curtis, Collins and Holbrook Co. I never received any pay on behalf of the Curtis, Collins and Holbrook Co. I never received any pay on behalf of my father for the lands for *which got* deeds from Gregory. I don't know that I ever talked over the lands described in the deeds from Gregory with Curtis. I don't [928] remember that. Whatever checking was done probably was done with Mr. Shurtleff or some clerk in his office. Father had been talking to Walker about selling him the land. He told Walker that he owned so much land up there that he had better try and get this too. I don't know whether there was any discussion between my father and Walker in relation to the sale of my father's interest in the Curtis, Collins and Holbrook

(Testimony of C. H. Holbrook, Jr.)

Co. to T. B. Walker. I do not think there would be because there was no reason for Mr. Walker to buy a minority interest in the corporation. My father discussed with me a great many times about trying to sell out. He wanted to get out. I was in town at the time father sold out to Collins. I might have been in the office. I could not tell whether I was present at the time Collins paid him and gave him the notes for the land or not. I could not tell you whether there were considerable negotiations between father and Collins or not.

The MASTER.—"Q. You spoke of certain resolutions whereby the corporation accepted proposals for the sale to them and purchased by them of these lands; that covered the timber and stone entries, did it not?

"A. Yes, there might have been the same resolutions prior to that about the forest land.

"Q. Who made those proposals?

"A. Mr. J. G. Curtis and Mr. T. D. Collins.

"Q. Were they actual proposals in writing, signed and handed in to directors' meeting and acted upon?

"A. They were all prepared by Mr. Shurtleff. [929]

"Q. Did these gentlemen sign them?

"A. I cannot tell; they may have; I presume that they would sign all this. If the books had not been destroyed by the fire, there would be a whole history of the whole transaction, all the minutes and everything. In some way father was *was* paid for all these lands through the Bank of California.

(Testimony of C. H. Holbrook, Jr.)

"Q. Can you explain how it was that the bank on behalf of these two gentlemen would pay your father?

"A. They would do it on telegraphic advices from these gentlemen east. In other words, father first, when father started in with this transaction, he was of very, very small means; he made his money out of that contract.

"Q. The scrip?

"A. The scrip, about 42,000 acres, and that money in the parlance of the street, he parleyed, he used that money to buy these other lands with and then turned and sold them, and father was making all the money he could out of it with the idea of giving them a square deal out of it, good value for what they had.

"Q. I was trying to get at the machinery of the transaction, that is all. In the closing up with Curtis and Collins as to these timber and stone entries, did you attend to that, or did your father attend to that?

"A. Well, the descriptions, I presume, and such things as that, I attended to.

"Q. I mean in the actual getting of the money; assuming that there were one or fifty claims?

"A. No, I would not have anything to do with that. [930]

(Further examination by Mr. Pier.)

I imagine my father had somewhere around eight or nine hundred or a thousand shares of the stock of the company.

"Q. Do you know whether he got any more stock than what was called for by the first contract?

(Testimony of C. H. Holbrook, Jr.)

"A. Yes, he bought part of the treasury stock at 100 and sold it to Mr. Collins at 200 a share. He did not take part of his pay for the stone and timber entries in stock.

I think he had to buy the stock the same as the balance. They paid $100 a share for the stock and they put that into the treasury for the corporation. Father would buy it and then a few months later he would sell it to Mr. Collins for $200 a share or $150 or $175. If he hadn't been crazy he would not have done it. Since giving my former testimony I have looked the same over. I wish to correct my former testimony in which I stated when asked how much the company acquired by forest reserve beyond the 42,000 acres under the original contract, and my answer was, "very little." My recollection is that the company acquired somewhere in the neighborhood of 48,000 acres of forest reserve and therefore the company must have laid five or six thousand acres beyond the 42,000 acres called for by the contract.

Cross-examination.

I took up a timber and stone entry myself. At the same time a number of San Francisco people filed on timber and stone claims, who were my friends. They were Mr. Haxey, Mr. Hargear, Mr. Ritter and Mr. Follingsbee. [931] Mr. Tuman showed them their lands. I made arrangements with Mr. Tuman in their behalf. Those lands were subsequently obtained by the Curtis, Collins and Holbrook Company. I gave for each of these claims somewhere between five and six hundred dollars. I might have loaned

(Testimony of C. H. Holbrook, Jr.)

one or two of them funds with which to pay the Government for their claims. Some of them used their own money and paid their own expenses.

"Q. Did you advance any of them expense money to make the trip to Plumas County?

"A. No. I may have paid—we hired a four horse team to drive over from Chico; I may have paid that and they may have refunded it to me. [932]

Testimony of Arthur W. Elam, for Complainant.

ARTHUR W. ELAM, called as a witness for complainant November 7, 1912, testified as follows:

Prattville, California, had been my home up to the last four or five years. My wife is there at the present time, but I do not live there. During the years 1901, 1902 and 1903 my residence was Prattville. I am a brother-in-law of J. E. Remick who was just on the stand. I am not at the present time in the employ of the Curtis, Collins and Holbrook Company. I have recently been doing work for the Curtis, Collins and Holbrook Company. I have a contract with them to cruise their timber. During the last three or four months I have been doing that work under that contract.

Cross-examination.

I am not in the regular employ of the Curtis, Collins and Holbrook Company.

Redirect Examination.

I am manager of the Western Timber Cruising Co. I employ a number of cruisers. At the present time I have no other contracts besides those with the

(Testimony of Arthur W. Elam.)

Curtis, Collins and Holbrook Company for cruising purposes.

Recross-examination.

I never acted as agent for the Curtis, Collins and Holbrook Company in any shape, manner or form. I was never authorized by them to do any act or thing other than to cruise their timber. [933]

Testimony of Arthur W. Elam, for Defendants.

ARTHUR W. ELAM, called as a witness for defendants, July 8, 1913, testified as follows:

My vocation is that of timber cruiser. I have known George E. Tuman since 1901. I became acquainted with him at Prattville. I am not related to him in any way. At that time I was engineer in a sawmill. During 1902 I was running a compass for Mr. Tuman in the woods, surveying a portion of the lands which are involved in these litigations. I became a timber cruiser in 1901. During 1901 and 1902 Mr. Tuman employed me to work for him by the day in connection with the lands involved in these different suits. I am familiar with the lands involved in this litigation, all the lands owned by the Curtis, Collins and Holbrook Company. During the years 1901 and 1902 I showed some of the people timber lands which they could locate. I had my first conversation touching the exhibiting or showing of these lands to the different men with Mr. George E. Tuman, at Prattville. Mr. Tuman came to me and hired me to work for him. I don't remember the conversation. Mr. Tuman's instructions to me to

(Testimony of Arthur W. Elam.)

show the people certain lands upon which they could locate were simply to show them certain tracts of land. He said nothing to me about endeavoring to purchase lands in any way. He did not tell me to make any [934] arrangements to acquire the lands or to offer any price or figure for them. Prior to the location of the persons upon the lands I had no discussion with any of the entrymen about acquiring the land or what they were to do with them when they were acquired. I became a proof witness for some of the entrymen at the request of the entrymen themselves. I know William C. Lawrence. He is not one of the entrymen involved in this litigation. I know he did make an entry up there. I handed him no money prior to his making his entry. I had no conversation with him in relation to financing his entry. I handed him money with which to pay for his land to be used upon his making final proof. It was in coin. I got $400 from Mr. Tuman. I advanced money to several of the locators for the purpose of paying for their land and making final proof. In each and every instance I obtained that money from Mr. Tuman. None of it was my personal money. When he handed me the money he would tell me to take the money and give it to these people to buy their land with. I think that was all he said. In every instance I took a receipt.

"Q. Did you take any notes? A. I took notes.

The MASTER.—Did you mean notes when you said receipts?

"A. Yes.

(Testimony of Arthur W. Elam.)

After I got the notes I gave them to Mr. Tuman or kept them myself. I am not certain now. I think I gave him some and kept some. [935] I negotiated for the purchase of some of these lands after the entrymen had made final proof. I had no negotiations for the purchase of the lands prior to the making of final proof. In making these negotiations and closing with the entrymen and finally consummating the deal, I returned the notes to the entrymen when they gave me the deeds. The deeds ran to Chas E. Gregory. I negotiated for the purchase of these lands at the request of Mr. Tuman.

"Q. Did any of the entrymen, and I understand you to say that you are familiar with all of them, the names of all of them, any of these different entrymen ever come to you and discuss with you the taking up of public lands in Plumas County under the Timber and Stone Act prior to their making their initiative location?

"A. I think they did, but I cannot recall any names."

I told these different people that I was not locating. I have known Thomas R. Baker ever since I was a boy. I have lived in Plumas County practically all my life and am thirty-seven years old. I advised Thomas R. Baker that certain lands upon which he had filed a timber and stone entry, were not worth taking up and had only a few trees on them, and that he had better abandon his entry. I showed him his land in the first instance. I took him out and showed him a piece of land he had the [936] num-

(Testimony of Arthur W. Elam.)

bers for, which was good timber land and he went to the Land Office and filed upon that land and found it was covered by an Indian allotment, and upon his own responsibility he changed to another quarter-section in the same township, I don't remember whether it was the same section but I think it was. When he came back I went out and examined this particular piece of land and found there were only twelve trees on it, and then I told him his land was worthless.

"Q. When you say he took up the land on his own responsibility, what do you mean by that?

"A. I mean that he had no—I presume I ought to have put it in a different way from that—he had no way of knowing whether the land was worthless or whether it had timber on it."

I have known T. D. Collins since late in the fall of 1902. At the same time I met E. S. Collins and D. G. Curtis. I am not certain whether I know J. G. Curtis or not. I think I met him. I knew C. H. Holbrook, Sr., in his lifetime. I know his son, C. H. Holbrook, Jr. I do not know Irving Moulton, Cashier of the Bank of California. I have known R. O. Wilson, connected with the Bayside Lumber Company, since 1905. I do not know Fred M. Whitworth. I met Mr. Shurtleff since the fire. I never discussed with T. D. Collins, E. S. Collins, J. G. Curtis, D. G. Curtis, Irving F. Moulton, Fred M. Whitworth or R. O. Wilson my connection with the entering of these lands or their acquisition. I know Mrs. Lillian B. O'Farrell in Mr. Shurtleff's [937]

(Testimony of Arthur W. Elam.)

office. I have never discussed this matter with her in any manner.

"Q. Have you ever discussed it with me?

"A. No, sir.

"Q. You have discussed it with me recently?

"A. Recently, yes."

I did not discuss it with Mr. Shurtleff prior to the commencement of these suits.

"Q. You have been in the employ of the Curtis, Collins and Holbrook Company from time to time, have you not, Mr. Elam? A. No, sir.

"Q. Haven't you been employed I mean, by them, cruising?

"A. Yes, I am doing a little work for them now." I have never been employed by them in any other capacity than that of cruiser. I was never employed by D. G. Curtis. I have never transacted any business of any kind, character, or description for him. I have been employed by E. S. Collins and am at work for him now. That is the only employment I have had from him. That is the work of cruising certain lands of the Curtis, Collins and Holbrook Company and certain lands belonging to Mr. Walker with a view of a possible exchange of the two pieces of property. Aside from that I have never been employed by E. S. Collins. I have never been employed by T. D. Collins or transacted any business for him, nor by J. G. Curtis. I have never been employed by Mrs. O'Farrell or R. O. Wilson. [938] In 1905 or 1906 I was employed by the Bayside Lumber Company when Mr. Wilson was president or manager. I was

(Testimony of Arthur W. Elam.)

never employed by R. O. Wilson in connection with any of the lands involved in this litigation, or by Mr. Moulton or by Charles A. Shurtleff. I know Charles H. Huntington. I never went out with Charles H. Huntington to look at any timber land. I was not interested in any way in the acquiring of these lands by the different entrymen. At the time Mr. Tuman came to me I was working as a compass man and receiving $3.00 per day. I received no compensation for showing people this land. I was interviewed by a man by the name of Cullom representing himself to be a special agent of the Land Office of the United States, late in the fall of 1902 on the streets of Greensville, Plumas County, California. He met me on the street and asked me to make a statement to him of what I knew about these people who were taking up land and I told him that I would not make a statement to him then; that I was in a hurry and I would see him at Prattville, and that I would be there in a day or two and see him at Prattville, and I saw him several times around the Hotel at Prattville, but he never asked me any further questions at all. He is the only Special Agent or person representing himself to be a Special Agent that ever sought to interview me about this matter.

Cross-examination.

I was paid my $3.00 a day as I saw fit to draw it. My expenses were also paid; that is, he paid for my keep at the hotel besides the $3.00 a day and I was to do [939] whatever he wanted me to do. Tuman paid me nothing for negotiating these loans

(Testimony of Arthur W. Elam.)

beyond my wages. I know Henry Dodge Morley. I don't remember when or where he asked me to act as his proof witness. I guess I was the witness for him.

"Q. Did he ask you to be a proof witness for him?

"A. If I was a proof witness for him he did, but I am not certain.

"Q. Had you ever seen Henry Dodge Morley before you went over to Quincy the day you made your final proof? A. I think so."

I don't remember where I had ever seen him before. I don't know where he lives and I don't know where he lived then. I don't recall Mr. Morley's final proof at all. I don't recall going to Quincy to assist him in making his final proof. I went to Quincy to assist in making final proof with Jack Heppe, several times but I don't remember how many. I acted as proof witness for Reuben Mitchell. I think Reuben Mitchell asked me to be proof witness for him at Prattville. I don't remember when. I don't know under what circumstances I met him at Prattville. I think we met Reuben Mitchell at Susanville with Jack Heppe. I had seen Reuben Mitchell before that time around town at Prattville.

"Q. As a matter of fact, didn't you go over there at the request of Heppe instead of at the request of Mitchell? [940] A. No.

"Q. You did not? A. I did not."

I was a proof witness for Henrietta Tuman at her request. She asked me to act as her proof witness at Prattville. She asked me to do that some time

(Testimony of Arthur W. Elam.)

before she proved up. I don't remember whether it was before she filed on the land or not.

"Q. Did Mitchell ask you to be a proof witness before he filed on the land?

"A. I don't remember the date.

"Q. I ask you if he asked you that before he filed on the land? A. I don't remember."

Self asked me to be a proof witness for him. I don't remember when or where. I think I made final proof for him in Quincy. Bill Lawrence asked me to be a proof witness for him; I don't know where he asked me to be his final proof witness. I don't think I was final proof witness for Charlie Allen or Carrie Allen. I don't think I went out with them to look at their land. When I went out to show Tom Baker his land, I think there were in the party, Mr. Baker and Tom and the two Baker girls, I am not certain, and maybe Mrs. Baker; I would not be certain about that, though. I did not act as proof witness for any of them.

"Q. When did you find out that Tom Baker filed on the wrong piece of land? [941]

"A. I think Mr. Tuman told me to go and look at a certain piece of land.

"Q. That is, Tuman told you to go and look at this piece of land that he actually did file on to see whether it was any good or not? A. Yes."

When I found that it was no good I told him so. I guess Tuman told me to tell Baker that this land was not any good. I would not have done that without Mr. Tuman's instructions. Mr. Tuman in-

(Testimony of Arthur W. Elam.)

structed me to take these notes in my name and I took all notes in my own name. I think I took a note from Bill Lawrence. I don't remember if I got his deed the same day that I gave him the money. I went over to Quincy to make final proof and I took the money over to make final proof. I think I got the deed to the land while I was in Quincy. I don't remember if it was all on the same day or not. I paid the $100 and I got his deed while in Quincy.

"Q. There was not any real necessity for a note under those circumstances, was there? A. Yes.

"Q. When you wound up the whole transaction right there, while you were right there in Quincy?

"A. I did not wind it up all at once, though.

"Q. Did you give Bill Lawrence the money at all, the $400? A. Yes.

"Q. Didn't you really give that to Macbeth to forward to the Susanville Land Office and didn't you give it to [942] Bill Lawrence at all? A. No."

I handed Bill Lawrence the $400 in the Plumas House; I think in my room, and I handed him the $100 in the same place. I don't remember whether I gave Henry Dodge Morley any money. I think I gave him $400 to pay for his land when he went over there to make final proof. I am not positive. I don't remember. I don't remember whether I paid him $100 and got his deed while there in Quincy. I did not furnish the Allens any money to prove up on. I know Jake and George Gardenhire. I went out with them to look at their land. Charles J. Monroe and Leroy Benner were along. I did not act as a

(Testimony of Arthur W. Elam.)

proof witness for them nor loan them any money to make their final proof with. I did none of the negotiating of these loans at all. I simply acted as Mr. Tuman's messenger in carrying the money and I know nothing about the terms upon which the loans were negotiated and had nothing to do with it. Whenever I took out any of these people to show them their lands, I did so at the direction of Mr. Tuman; I did not talk to any of these people beforehand. I was practically the messenger and guide as far as the land was concerned.

"Q. When people came and asked you to take them out and show them the land, you were not in that business unless Mr. Tuman had instructed you as to the particular individuals; is that correct?

"A. Not always; whenever they came with the numbers I took them out." [943]

I don't remember in whose handwriting these numbers were.

"Q .There must have been something that indicated to you that Tuman had designated these people?

"A. I presume so; they probably told me that I was to take them out or something like that; I don't remember now.

"Q. If a person was at all wise to the situation, so to speak, that is, understood the situation, he could come to you and state then that you were to take him out and show him a piece of land, and you would take him out without asking him any questions as to who has sent him or anything of that

(Testimony of Arthur W. Elam.)

kind? A. No, I don't think a stranger could.

"Q. Well, now, just explain what you mean by that; what kind of an understanding was it that you had from which you would show people the land?

"A. I had no understanding at all, whatever. I was working under Mr. Tuman's instructions to go out when there was anyone to go at all."

Mr. Tuman's initials were not on those papers that would come to me with a description of the land on them. I don't remember now how I would know whether or not Mr. Tuman would want them to have the land. In every instance where I took the people out I was satisfied in my own mind that Mr. Tuman wanted them to be located on that land. I think I have had this contract with the Curtis, Collins and Holbrook Company to cruise their lands since about a year ago in May. I did not form the Western Cruising [944] Company for the purpose of cruising their lands. I formed that company about a year ago in July, about two or three months after I got this contract. It was talked about before that, but I think we formed it in July. The corporation was formed by Mr. Tuman and me. At that time Mr. Remick had no interest in it. He has had an interest in it since November of last year. At the time I was working for Mr. Tuman I was not a timber cruiser. I was just running the compass and assisting him in whatever he was doing. I did not let the Bakers have any money. I know John Aid. I did not take any

(Testimony of Arthur W. Elam.)

money over to John Aid at Chico. I don't think I took any money to John Aid, Jacob Aid or Thomas Aid. I would not be positive about it. I dont remember when Elijah Taylor, R. C. Taylor, Charles Moore and C. H. Butler proved up. I did not go over with Jack Self to make final proof. I met him in Quincy. Jack Heppe was there at the time. Heppe and I were in Susanville together, when I went over to make final proof with Reuben J. Mitchell in Susanville. I don't think I acted as proof witness for the Gardenhires, Benner and Monroe. I was not there at the time the final proof was made with the money.

Redirect Examination.

At the time I was employed by E. S. Collins to cruise the lands of the company, nothing whatever was said to me about my testimony in this case. He has never discussed [945] with me what my testimony would be in this case, nor has anyone else connected with the company except Mr. Shurtleff. At the time I made this contract I had not discussed with Mr Shurtleff what my testimony would be.

Further Recross-examination.

I have talked with J. E. Remick in a general way about this case.

"Q. Did you go over the testimony?

"A. No, I don't think so particularly.

"Q. Haven't you since this case was begun discussed what each of the witnesses testified to with Mr. Remick?

(Testimony of Arthur W. Elam.)

"A. I suppose so, in a general way." I am a brother-in-law of Mr. Remick's. I have not seen Mr. Tuman's testimony nor heard it read. [946]

Testimony of John H. Heppe, for Complainant.

JOHN H. HEPPE, called as a witness for complainant, testified as follows:

My name is John H. Heppe; age, 38 years; I reside at Greenville, California; my occupation is maker of artificial trout-flies. I have lived in Plumas County and vicinity for about seventeen years, either at Prattville or Greenville. I am not a party to this suit. I know Mr. Charles H. Holbrook, Sr., and Charles H. Holbrook, Jr.; also George E. Tuman, Ned Remick and Arthur Elam. I do not remember just the year when I first met George Tuman and Mr. Holbrook, Sr. I think it was about 1902 or '03.

"Q. Did you ever do any timber cruising with Mr. George E. Tuman? A. Yes.

"Q. Did you ever have any other business dealings with him besides merely the timber cruisings?

"A. I took care of timber land, a forester."

I remember having made a timber entry, but I do not remember what year or month it was. I think it was in the spring of the year and it was before I met Mr. Tuman.

"Q. Now, after you made your timber entry did you have any business with Mr. Tuman in reference to locating people upon timber land? A. Yes.

"Q. Now, what was your understanding with Mr.

(Testimony of John H. Heppe.)

Tuman in regard to locating people on timber land?

"A. Well, he told me to get people to locate on timber land and he would furnish me the figures of the land. [947]

"Q. When you speak about the figures of the land, that is the description of the land as indicated by the Government surveys? A. Yes.

"Q. How much were you to be paid for getting people to locate on the timber land?

"A. I was supposed to get $25 apiece for them.

"Q. Twenty-five dollars for each person that located upon the timber land; is that correct?

"A. Yes.

"Q. Now, when were you to be paid the $25?

"A. Well, I don't know as there was any particular time stated for that.

"Q. Did you ever locate anybody on timber land?

"A. I showed them, different ones, lands, yes.

"Q. Did these people subsequently file upon that land that you showed them? A. Yes.

"Q. And do you know whether these same people proved up on the land? A. Yes.

"Q. Do you know whether or not any of them conveyed it to the people Mr. Tuman represented?

Objected to by Mr. Shurtleff. Objection sustained.

Mr. PIER.—"Q. Well, Mr. Heppe, with reference to each particular locator that you located, when did you get your pay for locating him upon that land?

"A. Well, I got the money from Tuman at dif-

(Testimony of John H. Heppe.)

ferent times, I would not say that I got paid for any particular one at any particular time; sometimes I borrowed a couple of hundred dollars from him, something like that. [948]

The MASTER.—"Q. Sometimes you got paid in advance, that is, you borrowed the money?

"A. Yes.

"Q. And at other times, would you render a bill?

"A. I always kept an account of what I borrowed, yes.

"Q. But did you render a bill like this, would you specify to the effect that certain of these applicants who had been located by you had filed or proved up or something of that sort, at $25 apiece, did you itemize it like that?

"A. No, I did not make out any bill like that.

Mr. PIER.—"Q. Mr. Heppe, would Mr. Tuman pay you for entries for your locating people upon land in cases where he did not get the title to the land?

"A. I don't know about that. I don't know whether he got the title or not.

Mr. PIER.—"Q. Now, Mr. Heppe, when you located people upon the land, any of these various parties that you located upon the land, would you get from them any filing fees, and locating fee?

"A. No.

"Q. If you got any compensation for locating them upon the land at all you would get it from Mr. Tuman? A. Yes, sir.

"Q. You were paid a regular salary? A. Yes.

(Testimony of John H. Heppe.)

"Q. You were paid a regular salary?

"A. For taking care of the timber, forester.

"Q. During the time that you were locating these [949] people on the land just after you made your entry, for probably a period of we will say nine months, were you under salary with Mr. Tuman at that time? A. No.

"Q. Now, what compensation did you get for locating these various parties?

The MASTER.—"He said $25 apiece.

Mr. PIER.—"Q. Would Mr. Tuman pay you for locating people upon land as soon as you had located them and they had made their application?

"A. No.

"Q. Would he pay you before they made their final proof? A. No.

"Q. Would he pay you if the people subsequently did not transfer the land to them?

"A. I don't know.

"Q. I will ask you, Mr. Heppe, if you know of any person whom you located upon the land who did not subsequently convey the land to Mr. Tuman or to people that he wished the land to be conveyed to? A. I think there was one.

"Q. Did Mr. Tuman pay you for locating that person upon the land?

"A. I don't remember whether he did or not.

"Q. Now when Mr. Tuman told you to go out and get people to locate upon land, tell us as near as you can what Mr. Tuman's instructions were to you?

(Testimony of John H. Heppe.)

"A. Well, they could take up the land and had a chance to make $100 or more off of it—those were about the [950] only instructions that he gave me.

"Q. They would have a chance to make $100 or more. Did he make any other statement to you in reference to how they would make that $100?

"A. Well, yes he did; when they made final proof, if they would sell the land to him, why give him the receipt, they would get $100 for it or something to that effect.

"Q. Did he make any statement at all with regards to expenses, or advancing the money for paying for the land—that is to pay the Government for the land? A. Yes.

"Q. What did he state in that regard?

"A. That he would pay all the expenses.

"Q. Did he state anything about advancing money for paying the Government for the land?

"A. He said the money would show up somewhere.

"Q. Did you actually locate people under these instructions upon land that corresponded to the descriptions which Mr. Tuman furnished you?

"A. I showed them the land, yes.

"Q. In picking out the persons whom you located upon the land, how did you determine who you would locate upon the land?

"A. I would sometimes have parties come to me and ask me about it, want to know if I had a place to locate them, and I would tell them yes.

(Testimony of John H. Heppe.)

"Q. Did you ever tell any of them no?

"A. Yes.

"Q. What would be your reason for telling anybody no?

"A. Well, I did not want to take chances on everybody. [951]

"Q. That is you were not taking chances—what chances would you mean, Mr. Heppe?

"A. Whether they would turn the receipt or not.

"Q. That is, after they had made final proof whether or not they would turn the receipt over to you and receive the $100; is that correct?

"A. Yes, to me, or Tuman, either one.

"Q. That is when some people would come to you. Would you go to any people? A. No.

"Q. You would not approach other people first?

"A. No.

"Q. How would people come to you and find out about locating upon the land?

"A. They would come and ask me about it.

"Q. Did you ever tell anybody in the community that you had land to locate people upon?

"A. I told them when they were talking to me about it; I told them I did."

I know Gertie Terrell of Greenville and I think I showed her some timber land in about 1902, but I do not now remember any conversation I had with her about the timber land.

"Q. Do you remember Jackson M. Self?

"A. Yes.

"Q. Did you know him during the year 1902?

(Testimony of John H. Heppe.)

"A. Yes.

"Q. Where did you know him?

"A. Prattville. [952]

"Q. Did you have any discussion with him about timber land? A. I think so.

"Q. Do you know whether or not you located him upon any timber land?

"A. I am not positive about it.

I think that some time in the fall of 1902 I met Mr. Self at Prattville and told him that I knew where there was one piece of timber land left and that if he wanted it he could enter it; if not, Al Costar would take it, and he said something about he was getting to be an old man and needed money and would take it and asked if there was anything in it. I told him there would be $100 in it. I think I remember such a conversation as that.

"Q. Do you remember having another conversation with Mr. Self on election day of that fall in which you asked Mr. Self if he wanted to take up that piece of land and he told you that he would be glad to do it, as he needed the money pretty bad?

"A. I don't remember the day.

"Q. After you had this conversation with Mr. Self, did you give him a description of the land that he was to locate under this conversation?

"A. Yes.

"Q. Do you know whether or not he applied for that land? A. I think he did.

"Q. Now, at the time you located Mr. Self upon this land or you gave him the description of the

(Testimony of John H. Heppe.)

land did you expect him to deed it to Tuman or whoever Tuman represented? [953]

Objected to as immaterial, irrelevant and incompetent, what he expected to be done. If there was any understanding or agreement of the kind let the witness testify to it.

The MASTER.—I will sustain the objection. You may have an answer to it, so that it will be in the record. Do not take very much time.

(Last question repeated by the Reporter.)

"Q. When he made final proof?

"A. I expected that Tuman would do something about it, yes.

"Q. I mean did you expect Self would do anything about it? A. Yes.

"Q. What did you expect Self would do in that regard?

"Q. That he would turn the land to Tuman, to Tuman or somebody whom Tuman named."

I know Carrie Allen and Charles J. Allen and I remember that I located them upon their timber land, showed them the land. I did not go to them. My recollection is that they came and asked me about the land.

"Q. What conversation took place as near as you can recollect, Mr. Heppe, between you and Mr. Allen?

"A. Well, I told him if he would take up this piece of land he probably would make a hundred dollars out of it."

I don't remember whether I talked to his wife

(Testimony of John H. Heppe.)

or not or whether I talked to him about his wife taking up a claim. I remember that I showed Charles Allen and Carrie Allen, or gave them the descriptions of the land.

"Q. Now, going back to Gertie Terrell, do you remember having a conversation with her in which you suggested [954] to her that she take up timber land and that her expenses would be paid and that she would receive $100 if she conveyed the land to whom Tuman represented? A. Yes.

"Q. Do you remember whether or not you showed her the land? A. Yes.

"Q. Did you subsequently receive your $25 for locating her upon the land?

"A. I ain't sure; I expect I probably did, though."

I know Reuben J. Mitchell and remember that I talked with him, either in Prattville or Susanville about taking up a timber claim along in 1902. I gave him a description of the land and I think I told him that I could get him $100 more for it than what he paid for it when he proved up on it.

"Q. Now, Mr. Heppe, just explain to us how you went about locating the various parties on timber land, just give a statement as to your general system of work of locating people on timber land.

"A. Well, I don't know as I have got anything that I can tell you in regard to it."

I do not remember approaching anybody to locate on timber land, but as I have stated, I would not give everybody a description of land that wanted

(Testimony of John H. Heppe.)

me to locate them and those I did locate I would not tell them anything about where it should go or anything of that kind.

"Q. You would not give them an explicit place where to go, but would you or would you not have some kind of an understanding as to whether or not they were to convey the land to whomever you suggested? [955]

"A. I might have—I don't remember.

"Q. Would you have given a description to anybody whom you did not think would convey the land as you desired?

"A. Well, people that were not friends of mine I refused to give any figures to.

"Q. Well, now, would you give these descriptions to all your friends that would come around?

"A. Yes, if I had them.

The MASTER.—He has already said that he refused some people, or would not give them to some people because he thought they would not turn over their receipts.

Direct Examination Resumed.

"Q. Mr. Heppe, you were testifying yesterday as to locating various people or showing various people timber land for the purpose of permitting them to locate upon timber land. Now, did you show any person any timber land or give them the description of that timber land with the idea of having them take this timber land up for any other person than Mr. Tuman or his associates?

"A. Not that I remember of.

(Testimony of John H. Heppe.)

"Q. During this period did you or did you not have any occasion to pay out money, expense money for taking these people to the place where you could show them the land and taking them over to Susanville to file on the land—did you have any occasion to pay out money in the way of expenses?

"A. I did pay some expenses.

"Q. When you paid these expenses, did you pay them with your own money? [956] A. No.

"Q. Whose money would you pay them with?

"A. Mr. Tuman's.

"Q. Do you remember making an entry on timber land in May, 1902? A. Yes.

"Q. And subsequently your wife made an entry upon some timber land also?

"A. I think it was the same year; yes.

"Q. Now, will you state the circumstances under which your wife made her entry?

Mr. SHURTLEFF.—"Is that involved here?

Mr. PIER.—"Yes, in these seventy-nine cases.

"Q. Will you state the circumstances under which your wife made her entry, Mr. Heppe?

"A. I showed her the land and gave her the figures of the land.

"Q. What did you tell her at the time you showed her the land and you gave her the figures?

"A. I told her she could make $100 on it.

"Q. And you and your wife's relations at that time were and still are very confidential, are they not? A. Yes.

And she practically does in business matters

(Testimony of John H. Heppe.)

whatever you wish her to do; is that right?

"A. Yes.

Mr. SHURTLEFF.—"Do you remember the date of her filing?

Mr. PIER.—"June 23, 1902. [957]

"Q. Will you state whether or not your wife's filing was in accordance with the general understanding that you had with Mr. Tuman in regard to having people locate upon land, file upon her land?

"A. She took it for granted that whatever I said was all right, she didn't know anything about any agreements I had with anybody."

I do not know that she had any idea about it at all; she was expecting me to attend to the business and I did not tell her who I was going to sell it to or what I was going to do with it that I remember of.

"Q. Did she have an idea she would keep the land?

"A. No, I think not. She expected to sell it.

"Q. She expected to sell it?

"A. And make $100 on it; yes.

"Q. Now, Mr. Heppe, at the time your wife located on this land, you expected her to dispose of that land as you told her to, did you not?

"A. Yes.

"Q. And she really expected to dispose of the land in accordance with any suggestions you might make; is that correct? A. Yes.

"Q. And at the time you showed her the land

(Testimony of John H. Heppe.)

and at the time she filed upon the land what did you expect to do with the land?

"A. I expected to sell it at some time.

"Q. Who did you expect to sell it to?

"A. I did not know who the party was at the time [958]

"Q. Where did you expect to sell it?

"A. I expected Mr. Tuman to take it and handle it some way.

"Q. Will you state your reason for expecting Mr. Tuman to take that land from you?

"A. Well, for the reason that he told me that there was a chance for me to sell it for $100 more than what I had paid for it.

"Q. Did Tuman tell you that he had parties that would take the land?

"A. No, he never said anything about them.

Cross-examination.

Mr. SHURTLEFF.—"Q. Do you remember the date of your own entry? A. No.

Mr. PIER.—"May 3, 1902.

It was a few days after I made my entry that I had a conversation with Mr. Tuman touching the locating of persons upon public timber land.

"Q. How came you to make your own entry?

"A. Through Mr. Tuman.

"Q. What occurred touching that?

"A. I think it was Mr. Tuman; either Mr. Tuman or Mr. Head, I can't remember which one.

"Q. What is your best recollection about that?

"A. It just happened to come in my mind that

(Testimony of John H. Heppe.)

Mr. Head might have been the one that gave me the figures.

"Q. Did Mr. Head or Mr. Tuman come to you or did you go to them? [959]

"A. Came to me, I think.

"Q. You think. Haven't you any definite recollection about that? In other words, do you know now who came to you?

"A. Well, I don't know whether I went to him or whether he came to me.

The MASTER.—"Or whether it was Tuman or Head?

"A. No, I think Mr. Head was working for some company, the Sierra Lumber Company. He might have mentioned it to me.

It was after I made my own entry that I had the talk with Tuman about placing locators upon lands to which he gave me descriptions.

"Q. Did Mr. Tuman tell you to make any agreement with your locators or these people that you located touching the purchase of the land?

"A. Not anything more than that they would receive $100 more than they paid for the land.

"Q. Did he tell you to say that? A. Yes."

I do not remember where this conversation took place but it was in Plumas County at either Prattville or Susanville.

"Q. Didn't Mr. Tuman say to you that if these different locators wished to locate upon timber lands that after they had made their final proof, if they wished to sell that they could get $100 plus their expenses? A. Yes.

(Testimony of John H. Heppe.)

"Q. Now, was that what he said, Mr. Heppe—are you sure that was the conversation?

"A. That is what I understood. [960]

The MASTER.—You mean that is what you understood him to say?

"A. Yes, that is what I understood from the conversation I had with him.

If I stated yesterday that I did not remember what I might have said to Gertie Terrell about her location that is as near as I can remember it. I have no distinct recollection of having told any particular locators that they could get $100 for their location. I do not know as I could pick out any particular one unless it was my wife.

"Q. Did anyone of these different locators say to you that they would sell? I mean prior to your showing them the land—did any of them say to you that they would sell to you or to Mr. Tuman or to anyone else when they got their title? A. Yes.

"Q. Who did say that? Which one said that to you? A. Those that I showed the land to.

"Q. Give us one that told you that before you showed them the land at all, that they would sell their land to you or Mr. Tuman for $100?

"A. I can name my wife for instance; that is the only one I can remember now.

"Q. Did she say she would sell it to Mr. Tuman?

"A. She didn't know who it was going to go to.

"Q. She couldn't have said, could she?

"A. She said she would sell it for $100 more than she paid for it. [961]

(Testimony of John H. Heppe.)

"Q. At that time, before you located her?

"A. When I located her or when I showed her the land.

"Q. You are able to recollect as an independent fact that before you showed your wife that land that she said to you 'I will sell it for $100 to whomsoever you may say when I get it'? A. Yes.

"Q. She said that before you located her?

"A. When I showed her the land.

"Q. Give another?

"A. I don't remember of any other particular one. There might have been some of them.

"Q. Are you able to say that there were any?

"A. I think that there were some, yes.

"Q. Well, who, do you know—have you talked with any of these different locators since this litigation arose?

"A. No, I have not talked with a one of them.

"Q. Who do you think that you said that to?

"A. It is a pretty hard question for me to answer; I can't remember all those things."

I do not remember the particular ones. The questions I asked them or what they told me. The locators generally came to me and asked me about taking up land. That was about all they would say to me, when I could locate them.

"Q. What would you say?

"A. I would give them the figures and show them the [962] land sometimes, and sometimes I would tell them where the land was and they would go themselves.

(Testimony of John H. Heppe.)

"Q. Is that all that would be said?

"A. About all that was said; yes.

My recollection is not very clear at that time as to what occurred more than seven years ago.

Mr. SHURTLEFF.—"Q. Did you ever go to Quincy or to Susanville with any of these different people that you showed the land to at the time they filed their initial application—you know what I mean by initial application? A. I did.

"Q. Who did you go with?

"A. Well, quite a number of different parties.

"Q. Well now, who, give us one that you went with?

"A. I think I went over with Wiley Forson, for one.

"Q. Where did you meet Wiley Forson?

"A. Prattville, I think.

"Q. And you went from Prattville to Susanville?

"A. Yes.

"Q. To Susanville or Quincy?

"A. To Susanville.

"Q. How did you go? A. A team.

"Q. Whose team?

"A. A team I got out of the barn.

I can't remember just the ones that I went over there with; I made two or three trips that I know of.

"Q. Who paid for that team? [963]

"A. Well, I am sure I don't know, I didn't.

"Q. Can you remember a single instance, a single dollar that you paid for or on behalf of any of these entrymen in the nature of an expense prior or at the

(Testimony of John H. Heppe.)

time they filed their application to take up this land?

"A. I paid some bills at Susanville.

"Q. Whose were they—I am talking about the application, not the final proof, remember that.

"A. That is something I cannot remember, who I paid it for or anything about that, I think the Register will perhaps show that."

I am certain that I paid some expenses in connection with the filing of the initial application but I can't remember which ones they were.

"Q. Who paid the hotel bill when you went with Wiley Forson? A. I think I did.

"Q. Well, now do you think: do you know?

"A. Yes.

"Q. You know you did pay it, do you? A. Yes.

"Q. Did you agree with him to pay it before he went there? A. I think so.

"Q. What did you say to him?

"A. That I would pay the expenses.

"Q. You told him that you would pay his expenses? A. Yes.

"Q. Had Mr. Tuman or anyone else authorized you to pay these expenses? [964] A. Yes.

"Q. What did Mr. Tuman say to you about the payment of expenses?

"A. He said that he would pay them.

"Q. Now, I understand you to say Mr. Heppe, that you went to Susanville with Wiley T. Forson and that you paid his expenses?

"A. I think I did. I ain't positive about it, but I think that I did."

(Testimony of John H. Heppe.)

I had my conversation with Mr. Tuman relative to locating people on timber lands after I made my own entry.

"Q. You know what I am asking you about, your conversation with Mr. Tuman in which you have testified to the effect that Mr. Tuman gave you directions to get men to enter upon these lands and gave you descriptions and you were to locate them and so forth. Now, what was that conversation before or after you made your entry?

"A. I am pretty sure it was after. It seems to me like it was after—after I made my entry."

I cannot say how long after, nor can I give the date. It was so long ago but my best recollection is that it was after I made my entry.

"Q. Who else did you accompany to any point to make their initial application, to file their affidavit of application—who else did you go with besides Mr. Forson?

"A. I think I showed the Browns some land."

I know that after I had showed them the land in order to make their entry they had to file an affidavit or application for the land but it has been so long I have forgotten the system that you go through, just what you have to do. [965]

"Q. Well, did you know or do you know now that they had to sign an application containing certain statements, among which are they do not take up the land for speculation and that they have neither directly or indirectly made any agreement to convey it to another? A. I think that is right, yes.

(Testimony of John H. Heppe.)

"Q. Did you know that at that time? A. Yes.

"Q. You knew they would have to do that before an official of the United States Land Office or County Clerk? A. I didn't remember.

"Q. But you knew they had to take that oath?

"A. Yes.

"Q. I understood you to say that you accompanied Mr. Forson to Susanville when he made that affidavit; is that correct?

"A. I think that was the trip I went over with him.

"Q. Do you know of any other of these entrymen that you went with at the time they made, swore to their application?

"A. I don't remember the names of anyone.

"Q. Well, do you remember that you went with anyone?

"A. I think I did make some more trips, but I don't remember just who they were with now.

I know I made some trips and I think it was when they made their filing but I do not remember just what trips I made or with whom, it was so long ago. [966]

"Q. That is just it exactly. Whatever the facts are, well and good, but what you guess we do not care for. That is not testimony.

"A. I can't remember distinctly what happened. It is impossible for me to answer, isn't it?"

I think I went with others aside from Forson when they made their applications but I cannot remember their names, neither can I remember

(Testimony of John H. Heppe.)

whether or not I paid their expenses.

"Q. I show you, Mr. Heppe, the hotel register of the Emerson Hotel, Susanville, California, under date of May 4, 1902, and ask you if this 'J. H. Heppe, Prattville, B 50 cents' is in your handwriting?

"A. Yes.

"Q. 'W. T. Forson, Prattville, B 50 cents'; is that in your handwriting? A. Yes, I think so.

"Q. And opposite the date, the 'B 50 cents' that would indicate 'bed'?

Mr. PIER.—"B is for breakfast, D is for dinner, S is for supper, L is lodging; that would indicate breakfast.

Mr. SHURTLEFF.—"Q. Now Mr. Heppe, I show you the Register of the Emerson Hotel dated May 3d, 1902, J. H. Heppe, Prattville, Room 19, L 2 —are the words 'J. H. Heppe, Prattville,' in your handwriting? A. Yes.

Mr. SHURTLEFF.—"I do not want to offer the whole Register in evidence here, but you will see that Mr. Forson's name does not appear anywhere else on that. [967]

Are these entries that you asked the witness about, Mr. Pier?

Mr. PIER.—Those entries are in the record, yes.

Mr. SHURTLEFF.—I think it will be admitted that the Register of May 3d does not contain the name of Mr. Forson.

The MASTER.—But it does contain the name of Mr. Heppe?

Mr. SHURTLEFF.—Yes.

(Testimony of John H. Heppe.)

Mr. PIER.—Mr. Head and Mr. Tuman.

Mr. SHURTLEFF.—Yes.

Mr. PIER.—Mr. Tuman's entry was on the 2d and it appears on the 3rd and Forson and Heppe on the 4th.

Mr. SHURTLEFF.—"Q. Now, seeing that Register, Mr. Heppe, are you still certain that Mr. Forson went with you to Susanville on this occasion that you have testified to?

"A. We made one trip to Susanville I know; whether it was that day or not I could not say.

"Q. It might have been at some subsequent date?

"A. It might have been a month after that or some other time, I don't remember.

"Q. It might have been on final proof that you went together?

"A. It might have been, I made one trip with him, I don't remember just when it was.

"Q. Didn't you make this particular trip with Mr. Head, on this date, didn't you go to Susanville with Mr. Head? A. I believe you are right, I did.

"Q. Now, what conversation did you say passed between [968] you and Mrs. Heppe touching her land that she took up; what did you say to her?

"A. I told her she could take the land up and sell it for $100 more than she paid for it.

"Q. What she could sell it—what did she say when you said that to her?

"A. It was all right with her.

"Q. Did she say she would sell it? A. Yes.

"Q. Did you tell her whom you could sell it to?

(Testimony of John H. Heppe.)

"A. No.

"Q. Had you in mind any particular person at the time that you told her to whom she could sell it?

"A. I expected to find a buyer for it yes, when she proved up.

"Q. But had you made any previous arrangement with anybody to have your wife's land when she took it up? A. No.

"Q. What makes you think your wife would dispose of your entry as you told her to? Was it because she had promised to do it or was it because she generally acted on your advice?

"A. She generally acted on my advice, yes.

"Q. Did she say at the time you talked with her about it, now I will take up this land and I will hold it and I will sell it to a particular person, naming him? A. No.

I am not positive whether I gave a description of land to Reuben J. Mitchell or not, but my recollection is that I talked with him about it but I do not remember what was said. [969]

"Q. Is that a distinct recollection?

"A. Yes, I know I talked with him.

"Q. You remember the circumstance of talking with him? A. Yes.

"Q. Do you remember as an independent fact what you said to him? A. No.

"Q. Did you go to Mr. Mitchell or did Mr. Mitchell come to you?

"A. I could not say as to that either."

My recollection of the conversation that I had with

(Testimony of John H. Heppe.)

Jackson M. Self is that he came to me and said he wanted to take up some land and I told him that I thought that I could find him a piece and that there would be a chance to sell it for $100 more than he paid for it. That is about all the conversation I had with him.

"Q. Did Mr. Self at that time make any promise to you to sell that property to you or anyone that you might name? A. I don't remember."

I do not remember that he said he would sell it to Mr. Tuman or to anyone that Mr. Tuman might name. I do not recollect that Mr. Tuman's name was mentioned in that connection at all. I do not remember that I had anything to do with the transfer of Mr. Self's land. I am sure I did not go to him and ask him to convey the property to Charles E. Gregory, Tuman, the Curtis, Collins & Holbrook Co. or anybody else. [970] I remember that I had a conversation with Mr. Self in Prattville about taking up land and I told him that I could furnish him the description of a piece of land.

"Q. Did you locate him?

"A. No, not that I remember of.

"Q. You don't remember that you took him out on the ground?

"A. He might have went and looked at it himself?

"Q. Do you remember now having had a conversation with him, of telling him that he could make $100 on the sale if he wished to sell it? A. Yes.

"Q. Do you remember that?

"A. I told him that, I think.

(Testimony of John H. Heppe.)

"Q. You think, but do you remember that you told him that? A. Yes.

"Q. What did he say then?

"A. He said that he wanted to make a little money, that he was getting old and could not work any more."

I do not remember that he said at that time "that is all right Mr. Heppe, I will go and do that and after I have located it and got my title I will sell it to you." I don't remember whether he said that or not. I am not sure whether I showed Charles J. Allen and Carrie Allen land that they located upon. I remember having some talk with Gertie Terrell about locating her on land but I do not remember just what it was.

"Q. Do you remember what you said to her about her [971] making her location?

"A. No, sir."

If I spoke to her anything about it at all it was that she would make $100 out of it.

"Q. Why did you say that?

"A. What do you mean?

"Q. Why did you say, if you spoke to her at all that you told her she could make $100 out of it?

"A. At Greenville. Well, that is what I told her, that she could make $100 out of it if she wanted to take up a piece of land.

"Q. Do you remember what she said in reply?

"A. No, sir.

"Q. Did she say if she did take it up she would sell it to you or any person you might name?

(Testimony of John H. Heppe.)

"A. I don't remember.

"Q. Do you remember Mr. Heppe that any of these locators, anyone touching whom you have testified of having had with them an agreement made prior to their location, that if they got the land they would transfer and sell it to you or to any person that you might name? A. No."

I cannot remember that I had any conversation with any of these entrymen in regard to the disposition of their lands.

"Q. At best, is this your best recollection: that when these different persons would come to you, that you think you said to some of them, that they could make $100 if they took up the land and sold it?

"A. Yes. [972]

"Q. And would your talk end there? A. Yes.

"Q. You cannot now recall a single one of them that said "I will do that when I make final proof?"

"A. No.

"Q. Now, I will ask you, Mr. Heppe, if you ever negotiated any of the transfers made by these different locators touching whom you have testified, whether you went to them and said 'here we want the deed'?

Mr. PIER.—Objected to as not proper cross-examination.

Objection overruled.

(Last question repeated by reporter.) Or get the deed?

"A. I remember doing that with some parties but I don't remember who they were.

(Testimony of John H. Heppe.)

"Q. You don't know any of them? A. No.

"Q. Do you remember the conversation that you had at the time? A. No.

"Q. Do you remember anything of the prices you paid? A. No.

"Q. You don't remember anything touching the transaction? A. No.

"Q. Except you remember that you did in some instances? A. Yes. [973]

"Q. You don't know how many or who they were?

"A. No.

Redirect.

"Q. Now, in regard to showing the people land, timber land for the purpose of having them file upon the same, did you ever get any fee for showing timber land to people from anyone but Mr. Tuman?

"A. No.

"Q. Did you expect pay from the entrymen when you showed them the land? A. No.

"Q. Now, when you took up some timber land, yourself, and also had your wife take it up, did you know of any person or place where you could go to sell that land?

"A. Well, I expected to turn it to Tuman, I guess, in some way.

"Q. Did you know of any other person or place where you could sell it besides Mr. Tuman?

"A. Not at the time; no.

"Q. Would you have taken up the land or had your wife take up her land if you did not know that you

(Testimony of John H. Heppe.)

could dispose of the land to Tuman or the people he represented?

"A. Well, that is a pretty hard question to answer; I would have perhaps taken up the land—if I had seen the place, I would have perhaps done it.

"Q. Do you think you would invest $800 in timber land at that time without knowing how you would dispose of it, who you would dispose of it to?

"A. I do not think I would. [974]

"Q.As a matter of fact, at that time you were pretty hard pressed for money, were you not?

"A. Well, I was not very well fixed, no."

I was not doing anything at the time, I was not able to work as I had been hurt in the saw mill and my illness used practically all my funds.

"Q. You did not at that time have $800 to invest in timber land, did you? A. No.

"Q. You did not have $400 to invest in timber land at that time, did you? A. No.

Recross-examination.

Mr. SHURTLEFF.—"Q. Suppose, Mr. Heppe, after you had taken up your entry and your wife had taken up her entry, some other person other than Mr. Tuman had come along and offered you more money than Mr. Tuman was willing to pay you, would you have sold the land? A. I might have.

Redirect.

"Q. After the year 1902 did you continue in the employ of Mr. Tuman at all?

"A. No, I was in the employ of the company.

(Testimony of John H. Heppe.)

"Q. In the employ of the company, which company was that?

"A. Curtis, Collins and Holbrook Company."

I was employed by the company as a ranger, [975] fighting fire, taking care of timber and work of that character at a salary of $60 a month. There was a time that I received $75. I don't remember just what year it was when I quit working for the company. I was in their employ probably three or four years. That was after the land had been taken up. If there was a fire I had to go out and fight it and I also employed men to assist me and sometimes I sent the bills for their services to Mr. Shurtleff; other times I drew on an account that was left at Prattville with Mr. Ed Abbott. We had a form of a check for me to fill out and present to Abbott and then he would pay them the money. When I sent the bill to Mr. Shurtleff the money would be sent direct to me and I would disburse it to the men and take receipts.

"Q. Was there ever any question raised as to how you disposed of the money? A. No.

"Q. Was there any time that they ever questioned the checks that you drew upon Mr. Abbott?

A. No.

Cross-examination.

Mr. SHURTLEFF.—"Q. Mr. Heppe, did you report to the company for all the moneys that you received and paid out? A. For fire fighting?

"Q. No, while you were in their employ?

"A. I think I did.

"Q. Isn't it a matter of fact that the company sent

(Testimony of John H. Heppe.)

you money to pay to certain people and that you did not pay [976] them?

"A. Not that I remember of now.

"Q. Didn't I representing the company either send or give you money to be paid to these very people, the Savercools, and which you never paid to them? A. I don't remember about it.

"Q. Didn't you write me a letter, Mr. Heppe, acknowledging that you had received that money and that you had not paid it to them?

"A. I cannot recall.

"Q. Do you pretend to say that you know that you paid and accounted for all moneys that the company turned over to you? A. I think I did.

"Q. Do you remember having written Mr. Tuman substantially that it was the best thing for the Curtis, Collins and Holbrook Company to get you out of the company and that you demanded $3,000?

"A. No, I don't remember.

"Q. Do you deny ever having written a letter like that? A. I don't remember that I did.

"Q. Do you deny it?

"A. I don't deny it, but I don't remember whether I did or not.

"Q. When did you go into the employ of the company, Mr. Heppe? A. When?

"Q. Yes, who employed you—Mr. Tuman did the employing didn't he? [977] A. Yes.

"Q. What year was that?

"A. 1902, I think, I ain't right positive."

During the time that I was in the employ of the

(Testimony of John H. Heppe.)

company I knew that you were the attorney of the company and that you handled their finances and attended to their business, but I don't think that I ever talked with you about the manner and my connection with the acquiring of these lands.

"Q. Never discussed this, never mentioned it did you? A. No.

"Q. Do you remember why you were dismissed from the employ of the company—I will tell you, I don't know, so that you may not think that I have something. Do you know why you were dismissed?

"A. Well, I think that I struck for higher wages, something to that effect.

"Q. Do you remember?

"A. I don't just remember what it was, perhaps if you have got it, and know and explain what it is I will remember."

My recollection is that the reason I quit was that they laid me off in the fall of the year and would not employ me in the spring.

"Q. You quit you say? A. Yes."

I spent some time up above Dunsmuir in the northern section of the state about two years ago.

"Q. While you were there at Dunsmuir, just please tax your memory; don't you remember writing a letter to [978] Mr. Tuman in which you said substantially that it would be the best thing for the company, the Curtis, Collins and Holbrook Company to get you out of the country, and that if they sent you a certain amount of money, $2,000 or $3,000, you would go to Oklahoma, or some place like that—don't

(Testimony of John H. Heppe.)

that aid you in recalling the matter?

"A. I can't recall any letter of that kind.

"Q. Do you deny that you wrote it?

"A. Well, there might be such a thing that I wrote, I ain't going to deny it.

"Q. But you never got any $2,000 or $3,000 did you to leave the country? A. No.

Mr. PIER.—"Q. At the time you were subpoenaed in these cases, that is when you were summoned to appear here, and the suit was started, at that time you were in Sisson when you were served with papers, when the suit was started, were you not?

"A. Two years ago.

"Q. About two and a half years ago?

"A. Yes, I was at Sisson.

"Q. Do you remember at that time sending word down here that you had been subpoenaed and that you needed money and a ticket or something like that to come on? A. Yes.

"Q. Did they send you anything to come on?

"A. They sent me a ticket to come down.

"Q. Do you remember who sent it to you?

"A. Mr. Tuman. [979]

"Q. You had a talk with Mr. Tuman while you were here? A. Just a few minutes.

Recalled.

Mr. PIER.—"Mr. Heppe, while you have been in attendance upon this trial, where have you been staying? A. At the Winchester.

"Q. You have been here twice; did you stay at the Winchester both times? A. Yes.

(Testimony of John H. Heppe.)

"Q. Did any of the witnesses in the Government's case stay at the Winchester while you were staying there? A. I think that four or five of them did.

"Q. Will you name the witnesses who stayed there while you were there?

"A. Charlie Allen and his wife, Mr. Brase, Gartelman, Mrs. Brown, my wife Mrs. Heppe.

"Q. Did Gertie Terrell stay there?

"A. Oh yes, Gertie Terrell stayed there.

"Q. Did James Perini stay there? A. No.

"Q. Did Frank Spring and his wife stay there?

"A. No.

"Q. Did John Van Ornum? A. No.

Cross-examination.

Mr. SHURTLEFF.—"Mr. Heppe, have you thought anything [980] further about those letters that I asked you about the other day?

"A. Yes, I remember writing them.

"Q. Is this your handwriting (showing)?

"A. Yes.

"Q. Who do you mean by 'Friend Jim'?

"A. I know what it is now.

"Q. Is that Jim Savercool? A. Yes.

"Q. That letter which I asked you about the other day, Mr. Heppe, which I thought was addressed to me, I was wrong; that was the letter that I had reference to. The other one is addressed to Mr. Tuman, written from Dunsmuir or Sisson, up that way. Do you remember that letter? A. Yes.

"Mr. SHURTLEFF.—Very well, I will read it in.

(Testimony of John H. Heppe.)

"'Greenville, January 19 1909.

Friend Jim—

In regard to the money the company owes you I got it some time ago and gave it to my wife to take Pauline down for treatment, and it has taken every cent I can now to get her cured. She will be home in ten days and then I will have a chance to save some money and pay my bills.

Hoping you all will give me a little more time and I will pay as soon as I can.

Yours very truly,

J. H. HEPPE.'

"Q. Now Mr. Heppe, as a matter of fact did you or did you not ever pay the Savercools this money? [981]

"A. I think that you paid it, didn't you, the second time?

"Q. You never did, did you, Mr. Heppe?

"A. No, I think you made it good afterwards; isn't that right?

"Q. That is practically correct, the company paid the bill the second time.

Mr. SHURTLEFF.—"About the other letter, your Honor, Mr. Heppe remembers writing it; I will account for it later. I will state to counsel that I thought that I had the letter, but after most careful research I have not been able to find it; I thought that either I had it or Mr. Tuman had it, but neither one of us have been able to find it.

The MASTER.—"I will have to take that motion

(Testimony of John H. Heppe.)

under submission, as to the letter that you have referred to.

Mr. SHURTLEFF.—"That is the letter directed to Mr. Tuman, written in Dunsmuir, where he makes the proposition to Mr. Tuman to go to Oklahoma on the receipt of so much money.

Redirect Examination.

Mr. PIER.—"Q. Mr. Heppe, was this letter that you wrote Mr. Savercool as to the money which the company made good, was that money ever taken out of your salary subsequently? A. No, sir.

"Q. How long did you remain in the company's service after this occurrence?

"A. I don't know; I was working for them quite a while afterwards. [982]

"Q. In regard to this letter to Mr. Tuman, that you wrote to Mr. Tuman; just explain the circumstances under which you wrote that, just tell us why you wrote it?

"A. Well, I will tell you—I thought that my evidence was damaging to the company; if it ever came up I would tell it, and I had business in the East to attend to of my own, and I thought if they could furnish me the money to go and have enough to take care of my family and get me out of the way at that time, if they saw fit to do it and it was worth that much to them, it would help me a whole lot at the same time too.

"Q. Did you have any talk with anybody before that time in reference to the case? A. No.

"Q. Had Mr. White been up there and talked to

(Testimony of John H. Heppe.)

you? A. I talked with Mr. White.

"Q. Did he try to get a statement out of you?

"A. Yes.

"Q. What did you say in reply?

"A. I told him when the proper time came I would make a statement; that I did not think it was necessary to make one at that time.

"Q. Did you write this letter before or after that?

"A. That was afterwards.

"Q. Probably how long?

"A. I don't know. Maybe a week or so afterwards.

"Q. Why did you write a letter of that kind to them asking them to put up $2,000? [983]

"A. I needed some money, I wanted to get out of the country if I could, to attend to my own business, which I am working on right now, trying to get money yet; that is my own money I mean in the east.

I wrote the letter to Tuman as I did not know who else to write to. I did not know whether or not he would take up the proposition. I thought maybe he might advise me now. I thought that I would be more apt to get it from him than from anybody else because he and I were very friendly. I wrote to Mr. Tuman rather than to Mr. Shurtleff because I was better acquainted with him.

"Q. Did you think that there would be more likelihood of your succeeding if you wrote to Mr. Tuman than you would if you wrote to Mr. Shurtleff?

"A. Yes. We had been together a good deal;

(Testimony of John H. Heppe.)

I was better acquainted with him in every way. Mr. Tuman understood that I had money back there, and if I got it he would get the money back anyway, so far as that goes. He understood that proposition, what I wanted to go back there for.

"Q. Do you know whether or not Mr. Tuman knew as to the character of your testimony, that he would figure it out that it would be well to get you out of the country?

"A. I don't think he seen it just that way, to get me out.

"Q. Did you consider it that way at the time you wrote the letter. That is what I had reference to?

"A. I did; I kind of thought that way.

I am not sure whether or not I mentioned in the letter that I wrote to Tuman the fact that the agent had been [984] there to see me. I most likely did. I could not say positively.

"Q. What was your reason for not making this statement to Mr. White?

"A. I did not think it was necessary. I told him I did not think I had to.

I had no reason other than that I didn't think he had any right to question me. He didn't show me any credentials that he could force me to talk and I told him that 'when the proper time comes, when I am subpoenaed and put on the witness-stand, I will tell the truth.'

Mr. SHURTLEFF.—"Q. You never got this money from Mr. Tuman—I think you stated you never received it from Mr. Tuman?

(Testimony of John H. Heppe.)

"A. No, I did not.

Mr. PIER.—"Didn't Mr. Tuman send you the money to come down to the city?

"A. Yes, he sent me a ticket to come down. I was subpoenaed at that time.

"Q. That was after this letter?

"A. Yes, that was the time he sent me a ticket to come down." [985]

Testimony of J. E. Remick, for Complainant.

J. E. REMICK, called as a witness for complainant, testified as follows:

My name is J. E. Remick. I lived in Taylorville during 1901 and 1902. Taylorville, Prattville and Greenville are in the the same neighborhood and in Plumas County. I am known as Ned Remick. I have several brothers. Their initials are L. C., R. T. and R. M. I am a brother-in-law of Arthur Elam.

At the present time I am caretaker of the Curtis, Collins and Holbrook land; have been for a number of years. I would not say how long, but about four or five years [986]

Testimony of J. E. Remick, for Defendants.

J. E. REMICK, called as a witness for defendants, testified as follows:

I am a timber cruiser. I am the caretaker for the Curtis, Collins and Holbrook Company lands involved in this suit. I also look after the Wheeler lands in Plumas County. The Wheeler lands in

(Testimony of J. E. Remick.)

Plumas County are in the neighborhood of 25,000 acres. The first timber cruising I did as an independent cruiser was in 1907. Before that time I worked as a compassman. I have known George E. Tuman since 1901. I know Arthur Elam. We are brothers-in-law. I have known Elam about 16 years. My present address is Taylorville, Plumas County, California. I have lived there 45 years and was born there. I have known Jack Heppe about 16 years. In the years 1901 and 1902 I had business transactions with Mr. Tuman. I am familiar with the lands involved in these suits and also with the names of the entrymen. I first entered the employ of the Curtis, Collins and Holbrook Company, I think, in the year 1908, quite a a while after the fire. Up to the time that I became caretaker of its properties I had not been in the employ of the Curtis, Collins and Holbrook Company. In 1901 I had no business with Mr. Tuman so far as these lands were concerned. In 1902 I was working for Mr. Head in some work on his hotel in Prattville and became acquainted with Mr. Tuman and with some other timber men that [987] were in that locality, Mr. Rodgers and Mr. Cook. I saw the trend of affairs and on going back to Taylorville early in the spring of 1902 I went out and looked over a couple of bodies of timber land, one of them in what is known as the 25–10 district and another in Township 25–12; and I sent word to Mr. Tuman and also to Mr. Cook I could show them a couple of bodies of good

(Testimony of J. E. Remick.)

timber land; Mr. Tuman was the first one that responded and I showed him the land first, or told him—I did not go with him to show it, I told him the locality and he subsequently looked it over. A little while after Mr. Tuman came to look at the land Mr. Cook and Mr. Wheeler came, and I went out with them personally and showed them the land. At the time I called Mr. Tuman's attention to this land, I told him that there were a lot of people who would like to locate on this land.

"Q. Did you have anything further to do with this land after this conversation?

"A. After this conversation?

"Q. Yes.

"A. I took Mr. Cook and Mr. Wheeler out subsequent to that.

"Q. As far as Mr. Tuman is concerned?

"A. Yes, I did.

"Q. What was that?

"A. I took people out and showed them this land that they subsequently located on.

"Q. Prior to taking them out to locate, to showing them this land, did you have any discussion with Mr. Tuman upon that point, whether you were to show them to locate them? [988]

"A. Mr. Tuman furnished me with a description by subdivision of the lands.

Q. What led up to his furnishing it, what occurred between you and Mr. Tuman that resulted in your doing this. Did you have any conversation as to what you should do?

(Testimony of J. E. Remick.)

"A. No, not in particular. I told Mr. Tuman that a lot of people would like to locate on the land, and Mr. Tuman subsequently examined the land and sent me by mail a description of the lands and we never up till that time had much conversation regarding it.

"Q. Was anything said about how you were to be paid?

"A. How I was to be paid; Mr. Tuman said—I understood, I told Mr. Tuman that Heppe was getting a location fee of $25 and Mr. Tuman said that he would see that I was protected in a location fee of $25."

I have known John W. Aid ever since 1902. I met him at Taylorville, California. He drove a team that brought Alex Cameron and Andrew Isenberg to Taylorville. I had a conversation with him at that time in connection with these timber lands. At that particular time he drove a rig that conveyed Mr. Cameron, Mr. Isenberg and myself out to look at a piece of timber land and on the way back he said he would like to take up a piece of timber land, also, and he had a couple of brothers, I think, and his father, and I told him to bring them along; subsequently he brought them and I located them. I have known William C. Lawrence ever since we were boys. I had a conversation with him touching the filing upon these lands, which occurred in Taylorville in the [989] street somewhere. I cannot state just how we happened to have the conversation. I met Mr.

(Testimony of J. E. Remick.)

Lawrence in the street and the conversation, which was the subject of the conversation of most everyone at that time, turned on timber lands, and the matter ultimately resulted in my giving Mr. Lawrence a description of 160 acres of land.

"Q. Did you go to Mr. Lawrence and take up with him the subject or question of his taking up timber land? A. I did not."

I know John Zuschlag, Joseph I. Kelley, Emma Kelley Heppler and Martha Zuschlag. I did not show them any public land. I did not take them out and show them the lands upon which they subsequently filed. I furnished them with a description of the lands. I am positive that I did not go with them. I will tell you in what particular I am positive about that: Mr. Zuschlag and Mr. Kelley and the two ladies came to my house in Taylorville and seemed to be ready or prepared to go out and look at this land, wanted to go, in fact asked to go, wanted me to show them a piece of timber land, and that that particular time my wife was sick in bed. Our little girl was born right at that time, and it was impossible for me to leave the house. Our little girl was born on the 18th of September, 1902. I saw nobody go out with them. I did not turn them over to anybody to take them out. I gave them a description and minute directions as to where they could find the corners. I didn't know anybody would meet them; I had no time to meet them. I do not know if anyone of that party knew the corners of the surveys. [990] I

(Testimony of J. E. Remick.)

had no conversation with W. C. Lawrence touching his entry other than I have already stated. I did not have any agreement touching the disposition of his land or what should become of it or what price he should receive for it or could receive for it. During the time I was showing the locators or the entrymen their lands I received moneys from Mr. Tuman. I would generally notify Mr. Tuman that I wanted some money and he would send me a check, ordinarily a check of different sums; I could not state how much now. The money I got from Mr. Tuman from time to time I used in various ways. Some of it I applied to my own personal use; the major part of it I loaned to these entrymen.

"Q. Loaned it to them at what time?

"A. In what respect?

"Q. Before they would look at the land, at the time they went to make their final proof or entry?

"A. In only one or two instances I loaned them the money—in a few instances I loaned them some money before they made their application."

I loaned John Huntington and Edward Cooksey money before they made their application and I am pretty sure Robert Taylor also. I know John Van Orum. I did not show him any land. I had no dealings with him in any shape or form. Several of these men I handed the $400 to or loaned it to them, that was required in paying for the land at the time they made final proof. Several I gave the money to, my brother, and he gave it to them.

(Testimony of J. E. Remick.)

I could not state how many of either. I could not state how many offhand, but [991] I could by looking over the list of those entrymen. I know that my brother Lem gave John Huntington and Edward Cooksey their money because I handed it to him. I know C. H. Huntington. He made application for a piece of land only. I had a discussion with him before he made his entry in Taylorville. He and his wife came to my mother's house and he said he wanted a description or wanted to take up a piece of timber land for himself and his wife, and I gave him a description of a piece of timber land and refused to locate his wife. Prior to his making this request,. I had no discussion with him, whatever, about the taking up of his land. I had said nothing to him about his ability to make $100 out of it. I know that Huntington did file on a piece of land under the Timber and Stone Act. He was to make his final proof in Susanville. I was in Susanville at the time. I saw Mr. Huntington there at that time and had a conversation with him about the entry. George Cooksey was present at the conversation. It took place at the Emerson Hotel. Leading up to that conversation George Cooksey came to me and said "What is the matter with Huntington—he is not going to make his final proof?" I said, "I don't know what is the matter with him; I thought he was." He said, "He isn't, and he wants to see you." So Cooksey and I went to Huntington's room and I said, "What is the matter with you? Aren't you going on and

(Testimony of J. E. Remick.)

make your final proof?" and he said, no, that there was a special agent of the Government had been to see him, or had him in his room the night before and told him, that land was contested for mineral, and if he proceeded or attempted to make proof on it, that they would have him indicted for perjury; [992] and consequently he did not care to make final proof; and I told him the best thing he could do if he didn't want to make final proof was to go over and file his relinquishment and preserve his right, timber and stone right, and I went with him to the Land Office, and stated to the officials of the Land Office, myself, that Mr. Huntington did not care to go on, that I was a proof witness of Mr. Huntington. He said the name of the special agent was Parsons. I never met Parsons myself. I looked for him and he had left Susanville that morning on the early train. Huntington did not say anything as to who was making this mineral contest. Nothing was said as to Parson's connection with the matter. Huntington said that Parson's was a special agent of the Government's. Huntington did not care to make his proof, because he was afraid to make a nonmineral affidavit and he quit. I had no further conversation with Huntington about his entry. I had no telephone communication concerning it, with him. I remember nothing about any such conversation as testified to by Mr. Huntington on page 2300 of the Transcript, which is as follows:

"Q. You took up some timber land in Plumas

(Testimony of J. E. Remick.)

County in the year 1902? A. Yes.

"Q. Do you remember filing on some?

"A. Yes.

"Q. Will you state how you came to file on this land?

"A. Well, I was over to Taylorville, had driven over there; I had driven over from Quincy to Taylorville [993] in a rig, and when I was ready to go home Mr. Remick passed me and asked me to stop at the house, he would like to speak to me, before I went away; I called as I was going by and he asked me if I did not want to take up a timber claim; I asked him what there was in it, and he told me there was $100 and expenses."

I don't remember any conversation regarding that at all. That conversation did not occur; I know it did not, not to my recollection it did not. I remember distinctly that Mr. Huntington asked about locating himself and wife. I located Huntington but refused to locate his wife. I did not go out in the woods with them.

"Q. Now, Mr. Remick, did you ever have any conversation with anyone of these locators in which you told them that if they would go out and locate lands that their lands could be sold and that they would make at least $100 profit in it?

"A. I did.

"Q. How many, and who?

"A. John Huntington and Edward Cooksey.

"Q. Any others?

"A. Not to my knowledge.

(Testimony of J. E. Remick.)

"Q. But you remember those?

"A. I remember those two distinctly, because they were the two first that I had anything to do with, and it was necessary to start something, and I explained it to them; subsequently I did not have to say anything to anyone particularly."

"Q. What did you mean by your answer 'to start something'?

"A. Well, I had these numbers and no one seemed to know that I was locating anyone just at that time and I [994] thought, I felt it was necessary to bring it to their attention, and so I brought it to the attention of Cooksey and Huntington."

I could not remember just the conversation that I had with them. I think I asked them if they wanted to take up a piece of land; I told them that they could by taking up a piece of land make $100; they wanted to know how, and I told them by selling it. They said they did not have any money to take it up, and I told them they could borrow the money. That is as near as I remember it. I never told them I would purchase it, because I was not in any position to purchase it. I told them I could assure them they could sell it. That was John Huntington and Edward Cooksey. I was not in any way interested with Mr. Tuman and Mr. Holbrook in any of the profits which they might realize from the acquirement of this property. The compensation that I was receiving for my work was $25 for each locator. At the time

(Testimony of J. E. Remick.)

that I had this conversation with Cooksey and Huntington I knew whether or not Heppe was making locations.

"Q. Did you know then who he was making them for, or had you heard?

"A. Only that he was making them for Tuman or in connection with Tuman."

I did not have any conversation with Mr. Tuman or Mr. Holbrook or anyone representing them in relation to the advisability of securing certain lands in order to monopolize the right of way out from other property, other lands of the Government.

"Q. You know what publication contracts are, don't [995] you, in connection with public lands, and the entry of them, filing on them?

'A. I do."

I know Mr. Hall, proprietor of the "Independent" a paper in Quincy. The younger man is A. A.; the older man is A. Hall, commonly called "Doc" Hall. I never went to him personally or to the office and received forms of publication contracts. I have received them, however; they were forwarded to me by mail. I have made payments for publication notices to the Halls, something over $200, I think, at one time by mail. It was in payment for the publication notices and the check was my own personal check. The check was mailed. I probably sent it with a letter. I don't know what the letter contained. The check was in full of the amount. I don't remember whether they had sent me a bill or not before that time. The money

(Testimony of J. E. Remick.)

I used in paying this bill undoubtedly came from Tuman. I remember no conversation with Mr. Huntington touching the sale of land upon which he had filed. I might have had such a conversation.I would like to make a statement with regard to Charlie Huntington; looking over that list the other day for people that I gave final proof money to, his name did not appear on the list, but I gave Charlie Huntington the money to make final proof with. At the time of taking up of these lands I thought I was familiar with the law regulating the taking up of land under the Stone and Timber Act.

"Q. Did you or did you not have any knowledge of the making of any contract by entrymen before they made their filing? [996]

"A. Well, as far as my knowledge of it was concerned, I thought that you could not make a contract at any time, either prior to application or final proof."

Mr. Tuman had advised me not to make any contracts. I never made any contracts to purchase any lands. I had a conversation with Cooksey and John Huntington in relation to the amount that they might get or could get for the land if they took it up. I cannot recall having any conversation with any others. Mr. Tuman did not tell me the purpose for which he was gathering this land or wished to acquire it. I had no conversation as to what disposition he proposed to make of it or to whom he was intending to sell it. Mr. Tuman handed me money from time to time. Generally

(Testimony of J. E. Remick.)

I would ask him or write him that I wanted money and he would send it to me. I don't think I had any conversation with Tuman in relation to the advancing the costs of these entrymen to pay their expenses before filing. I negotiated with some of these entrymen for the purchase of their lands. I negotiated for the purchase of Edward L. Cooksey's land, John Huntington's.

"Q. In any of these deals, these purchases that you made, were there any promissory notes in evidence in any that you remember of, of any of the sellers? A. Yes.

"Q. What were the notes and what was done with them?

"A. The notes of John Huntington and Ed Cooksey, they gave a note to F. C. Lewis." [997]

At the time of the purchase the notes were returned to them. I have been in the Park Hotel in Chico and in the cloak-room of that hotel. It is a little room, probably about 7 by 9 feet, under the stairs running off the lobby. It has no windows in it, and is lighted by one drop light in the center of the room. There is no furniture at all in the room. When these descriptions were handed to me I was not given any directions that certain descriptions should go to certain specified individuals. The entrymen, when they made application to me for these descriptions, never stated that they wanted to take up any specified piece of land by a description or anything of that kind.

"Q. As regards the parceling out of these differ-

(Testimony of J. E. Remick.)

ent descriptions, Mr. Remick, that were handed to you, would you go to the entrymen and hand the descriptions to them, or would they make application to you and be given out on application?

"A. Most of them made application to me, came to me for descriptions."

I took descriptions to Ed. Cooksey and John Huntington without their first coming to me and asking me for them. I cannot recall any others. I think I was proof witness in only one case, that of Charles Huntington. I don't remember how I came to be a proof witness in that case. I interviewed quite a number of entrymen who were defendants in these cases with relation to Mr. De Forrest's appearance for them. At that time I told them that I was [998] working for the Curtis, Collins and Holbrook Company and that I—I would ask them first had they been summoned to appear in San Francisco on these cases, and if they had, and most of them had, I would tell them that it was not necessary to go if they would sign an authorization and give me this authorization empowering Mr. De Forrest to appear and it would be an accommodation to us and would have them some trouble.

"Q. Was that all that was said?

"A. That it was to our interest to get these authorizations, to obviate any default that might occur."

I think I began working for the company in 1908. I have known T. D. Collins since late in the fall

(Testimony of J. E. Remick.)

of 1902 or the spring of 1903, I don't remember which. I know there was a little snow on the ground. I met E. S. Collins at the same time. The first time I met Dan Curtis was in Oroville in 1910. I never met J. G. Curtis before he appeared as a witness in these suits. I do not know Irving F. Moulton, a director of the company. I have not met him to my knowledge. I know Charles H. Holbrook, Sr., and Charles H. Holbrook, Jr., L. B. O'Farrell, formerly L. B. Williams, and R. O. Wilson. I do not know F. M. Whitworth. I never discussed my connection with these entries and my knowledge of them prior to the commencement of these suits with T. D. Collins, E. S. Collins, J. G. Curtis, D. G. Curtis, Mrs. O'Farrell, R. O. Willson, Mr. Moulton, nor F. M. Whitworth. [999] I know Charles A. Shurtleff and have discussed with him my knowledge and information in relation to these entries since 1910. I do not think I was ever employed by the Curtis, Collins and Holbrook Company in any other capacity than as caretaker of its property, prior to the commencement of these suits. I never negotiated any purchases or sales by that company or for T. D. Collins, E. S. Collins, J. G. Curtis or D. G. Curtis.

Recalled.

The MASTER.—"Q. How did your relationship with Mr. Tuman come about?

"A. How did it come about?

"Q. Yes.

"A. Why, I sent word to Mr. Tuman—my first

(Testimony of J. E. Remick.)

acquaintance with Mr. Tuman, you mean?

"Q. Tell the story.

"A. My first acquaintance with Mr. Tuman was, he was stopping at Mr. Head's hotel in Prattville. I worked for Mr. Head putting a foundation under the hotel, and I met Mr. Tuman's wife first and she introduced me to Mr. Tuman and we used to play cards in the evening together; so my first acquaintance began. They my business relations with Mr. Tuman occurred the next spring, that was in 1901, I am pretty sure that I met him first, and in 1902 I sent word to him that I could show him a couple of pieces of timber land and that was how it came about.

"Q. That is not all. You said you could show him a couple of pieces of timber land? Then what happened? [1000]

"A. Mr. Tuman came and asked regarding the timber land and I was busy at that particular time, I could not go with him to where it was, but he and Mr. Elam went together to look at the timber land.

"Q. Then how did it come about that you were employed by him to locate people? I used the word 'employed' without any particular significance.

"A. I sought employment.

"Q. You went to him? A. I went to him.

"Q. How did you come to go to him?

"A. I told him this was good timber land and people were anxious to take it up.

"Q. What was it moved you in the matter?

"A. The location money.

(Testimony of J. E. Remick.)

"Q. Do you mean the location fees?

"A. The location fee; yes.

"Q. Do you mean that you had heard that Heppe was doing the same thing and you wanted to do it, too?

"A. I had heard Heppe was locating people and I wanted to do it."

Cross-examination.

Mr. PIER.—"Q. When did you have this conversation about this—what time was it when you sent word to him about this timber land?

"A. It was sometime in the early part of 1902."

I could not definitely state what time. I think it was before June, probably in April or May, somewhere along there—I hardly think before March. [1001]

Tuman came to see me at the Diamond Mountain Mine in Light's canyon, a mine owned at that time by Fred Linscott and Bren Smith, about 17 miles from Taylorville. Elam was with him. Tuman came first and Cook came afterwards, to look at the land. I was in Taylorville when Cook came and I took him up to look at the land. It must have been a month after Tuman came that Cook came. I don't remember whether Mr. Tuman ever cruised that land or not. I could not state just when he gave me his description to the land, first. The description came to me by mail. I saw Mr. Tuman once between the time that I told him where the land was and when he sent me the descriptions, in

(Testimony of J. E. Remick.)

Taylorville. I don't remember any particular conversation that we talked about at that time. I don't remember just how long it was between the time that I told Tuman about the land and the time he sent me these descriptions. It was not a great length of time; I hardly think it was three months. It could have been a month—it might be two weeks. I would not say; I don't remember the length of time at all. The money that I advanced to John Huntington and Edward Cooksey to pay their expenses to go to Susanville, I undoubtedly got from Mr. Tuman. All the money that I advanced to the various entrymen to pay their expenses to go to Susanville was money that I had received from Tuman.

"Q. Then you had already received money from Tuman at the time you talked to Huntington the first time?

"A. I would not be positive about that, whether I received the money before I talked to Huntington or after.

"Q. It was before he went to Susanville?

"A. Before he went to Susanville." [1002]

At various times Tuman advanced me considerable sums of money as I went along. I accounted to him as to how I used the money. I told him how I used each particular amount of money that he advanced to me. I gave him credit for the entire sum, that is, I kept account of the moneys advanced at each time, and when I severed my relations with Mr. Tuman, I gave him an accounting at that

(Testimony of J. E. Remick.)

time of the whole affair. Mr. Tuman was not paying me any expenses while I was having these people located on the land. The only thing that I got out of it was the $25 fee that was turned over. There was no expense money to pay my travelling expenses in connection with it all. I had to pay my own.

"Q. Then there was something said between you and Mr. Tuman as to advancing money to entrymen to pay their expenses, was there not?

"A. Not to my knowledge. Mr. Tuman, all I remember about any money conversation, he said to let him know when I needed money.

"Q. Mr. Tuman told you to let him know when you needed money? A. Yes.

"Q. When did you have this first talk about the money? When did he make that remark to you when you wanted money to send to him?

"A. I don't remember when it was.

"Q. Was it at the time you told him about this good piece of timber land?

"A. I don't remember.

"Q. Where was the conversation; where did he tell you that? [1003]

"A. I don't know whether that was by letter or he told me. I tell you, I did not see Mr. Tuman very much after Mr. Tuman came to that mine—Mr. Elam and Mr. Tuman came to the mine—I think I saw him only once after that.

"Q. Did Mr. Tuman tell you that his people

(Testimony of J. E. Remick.)

would be willing to pay $100 over and above expenses for the land?

"A. Mr. Tuman never mentioned his people or any people.

"Q. Where did you get the idea of the $100?

"A. I got the idea from the operations that were carried on by Heppe.

"Q. By Heppe? A. Yes.

"Q. Had you ever talked with Heppe about his operations?

"A. I had asked Mr. Heppe to locate me on a piece of land.

"Q. You asked Heppe to locate you on a piece of land? A. Yes.

"Q. Did Heppe tell you there was $100 in it?

"A. Heppe did not tell me anything; he did not locate me.

"Q. Did Heppe tell you there was $100 in it?

"A. No, he did not.

"Q. He did not tell you there was $100 in it?

"A. I had heard it all around the country.

"Q. You knew then that Heppe was representing Tuman, did you not? [1004]

"A. I did not.

"Q. You knew he was working with Tuman?

"A. I knew he was working under Tuman. At least I supposed he was; I had no confirmation of that fact.

"Q. What I want to know is what your understanding of it was. We have established the re-

(Testimony of J. E. Remick.)

lations between them, but I want to know your understanding?

"A. My understanding is he was working under Tuman.

"Q. Was working under Tuman?

"A. Or for him, I don't know.

"Q. Which was it, under him or for him?

The MASTER.—"It does not make any difference."

Mr. PIER.—"Q. It makes quite a little difference in what his supposition was, whether Tuman was the big man or not.

"A. My supposition is he was working for Tuman.

"Q. For Tuman? A. For Tuman.

"Q. And that he was locating people on land for Tuman?

"A. Yes, that he was locating people on land.

"Q. And that the people who he was locating, their expenses were being paid?

"A. I didn't know anything about that.

"Q. What did you offer to pay Huntington and Cooksey their expenses for?

"A. I don't think I said I offered to pay their expenses.

"Q. You did pay their expenses on that first trip? [1005] A. I did.

"Q. How did you come to do it. You had offered to do it to start this business, didn't you?

"A. I think, Mr. Pier, that Mr. Cooksey and Mr. Huntington went to Susanville with their own rig.

(Testimony of J. E. Remick.)

That is, this is my best recollection, that they stopped with some relative of Mr. Cooksey's the first trip over there; that is my recollection; they stayed with a man named Bass.

"Q. Were you along on that trip?

"A. I was not.

"Q. You know then from what they testified here? A. No, my brother went with them.

"Q. Your brother went with them?

"A. My brother did.

"Q. But you advanced some money for expenses on that trip?

"A. I don't think they had any expenses on that trip; that is my recollection of the affair now; you know it is quite a while ago, but I don't think they had any expenses on that trip.

"Q. Didn't you tell them you would advance them the money to get started, advance the money to make final proof?

"A. I told them I would advance the money.

"Q. You got that understanding from where, that you could do that?

"A. From my knowledge of the affair to Heppe and all that. [1006]

"Q. You understood that Mr. Tuman was advancing money to make final proof with?

"A. Sure; yes.

"Q. And you also understood that he was advancing money to pay their expenses with?

"A. No, I did not know anything about that.

"Q. You advanced money to different people to

(Testimony of J. E. Remick.)

pay their expenses on these trips? A. I did.

"Q. You understood then that Tuman was advancing that expense money, did you not?

"A. I did not.

"Q. Tuman actually did advance expense money?

"A. He advanced it through me.

"Q. He advanced it through you?

"A. That is I advanced it at my own initiative.

"Q. Why would you request Tuman to send you money? What did you request him to send you money for?

"A. To make this final proof with. I never would send to Tuman for any specific sum.

"Q. You would send for money?

"A. Yes, send me some money.

"Q. Just send you some money? And you had money there which you advanced to people to pay their expenses with?

"A. Yes, I had money of Tuman's.

"Q. Why did you ask Tuman for money for that purpose if you did not understand that the money was to be advanced?

"A. I did not ask for money for that purpose. [1007]

"Q. Just asked for money?

"A. Just asked for money.

"Q. You used it for that purpose?

"A. I used it for that purpose.

"Q. And you understood that was all right?

"A. I had no understanding about it. I never rendered Mr. Tuman an account of what became of

(Testimony of J. E. Remick.)

money until we were through and then Mr. Tuman—

"Q. (Intg.) When Mr. Tuman advanced you money what was it for; what did he give it to you for?

"A. He gave me money for the purpose of loaning to these people.

"Q. Loaning it to them for what purpose?

"A. For the *purpose paying* for their land.

"Q. And their expenses on that trip over?

"A. I used it for that.

"A. But I never asked Mr. Tuman for it for that reason.

"Q. Mr. Tuman indicated to you that would be satisfactory to him? A. He had not.

"Q. He had not? A. No.

"Q. So you used this money for a purpose he did not authorize you to use it for? A. I did.

"Q. You embezzled the money?

"A. I did not.

"Q. How much money did you advance to Robert Taylor? [1008] A. Fifty dollars.

"Q. What was that to cover?

"A. I could not state just what it was to cover.

"Q. That was to cover the expense of the men who were along on that trip, was it not?

"A. On the trip?

"Q. That is what it was for? A. Yes.

"Q. That is what you advanced it for?

"A. To cover expenses.

"Q. When you advanced that money to them you

(Testimony of J. E. Remick.)

expected to get their land finally for Mr. Tuman?

"A. I can't say, Mr. Pier, that I had any expectation in the matter; all that I was interested in was getting the location fee.

"Q. Now, you would not get the location fee unless the land was delivered?

"A. No, I did not.

"Q. So the land had to be delivered in order for you to consummate your deal?

"A. I did not get any location fee until it was delivered.

"Q. It had to be delivered before you could get the money?

"A. I don't think there was anything—

"Q. (Intg.) You never got any money for any land in which the land was not delivered?

"A. Not to my knowledge, I don't remember of any.

"Q. That was not your understanding. Your understanding was you were to be paid upon the delivery of the [1009] land? A. No.

"Q. That is upon the land being sold to Mr. Tuman you were to get the $25?

"A. I don't think there was anything said in regard to that matter at all; I don't think so.

"Q. What was the $25 for?

"A. For locating these people.

"Q. But you were to be paid when the land was sold?

"A. I think I said to you, Mr. Pier, there was

(Testimony of J. E. Remick.)

nothing said in that matter at all; I was paid when the land was sold.

"Q. You asked Tuman to protect you in the location fee and he told you when the land was sold you would get a location fee of $25, he would protect you in the selling price?

"A. He did protect me.

"Q. He said he would protect you?

"A. He did, and he said he would.

"Q. When the land was sold?

"A. I don't remember anything about that.

"Q. Until the land was sold he could not protect you in the location fee of $25?

"A. No, of course.

"Q. So then you really expected every time you would advance this money or locate any person to get the land from them for Mr. Tuman?

"A. For Mr. Tuman. I can't say that I had any [1010] expectation in the matter at all.

"Q. How would you get your $25 if it was not delivered?

"A. I had to take a chance on that.

"Q. Of course you had to take a chance on it, but what I mean is that was your expectation and desire?

"A. That was my desire, certainly.

"Q. What was the purpose of telling—as I understand it you told this to Cooksey and Huntington in order to get something started?

"A. In order so that people would be cognizant of the fact that I was locating them.

(Testimony of J. E. Remick.)

"Q. And also in order to induce John Huntington and Ed Cooksey to take up land?

"A. I don't think it required much inducing.

Mr. PIER.—"Q. You had considerable discussing with Huntington and Cooksey before they took up their land, did you not?

"A. Not a great deal.

"Q. You told them they could sell the land for $100 if they took it up, didn't you? A. I did.

"Q. And that they could get their expenses paid?

"A. I don't think I said anything about expenses; I don't remember of anything of the kind.

"Q. You did actually advance them their expenses? A. I did. [1011]

"Q. And that you would show them the land?

"A. Did I show them the land?

"Q. And that you would show them the land or give a description?

"A. I gave them a description.

"Q. Told them where the land was? A. Yes.

"Q. And gave them the description of it?

"A. Yes.

"Q. Did they tell you they would take up the land?

"A. I don't remember that they did.

"Q. What did you give them descriptions for?

"A. So that they could take it up.

"Q. Then they indicated they were willing to take up the land?

"A. I say I don't remember that they did; probably they did.

"Q. You would not give them a description unless

(Testimony of J. E. Remick.)

they would take up the land?

"A. I do not think so.

"Q. Now, as I understand it, your examination was this way: 'Q. Now, Mr. Remick, did you have any conversation with any one of these locators in which you told them that if they would go out and locate lands that their lands could be sold and that they would make at least $100 profit in it?

"A. I did.

"Q. How many and who? [1012]

"A. John Huntington and Edward Cooksey.

"Q. Any others?

"A. Not to my knowledge.

"Q. But you do remember those?

"A. I remember those two distinctly because they were the first that I had anything to do with, and it was necessary to start something, and I explained it to them; subsequently I did not have to say anything to anyone particularly."

"Q. What did you explain to them?

"A. I explained to them that they could take up this piece of land or could take up a piece of land and that they could sell it at a profit, that they could borrow the money.

"Q. At a profit of $100?

"A. At a profit of $100; no less than $100; that they could borrow money and that I would give them a description.

"Q. If they were willing to take up the land?

"A. That would probably go with it; they would have to be willing or they would not do it.

(Testimony of J. E. Remick.)

"Q. You did not tell them anything about your $25 location fee?

"A. I told them I was to get $25 out of it. They wanted to know what I had to do with it.

"Q. Did you tell them that Tuman told you you would get that $25?

"A. I don't think I did. [1013]

"Q. You did not tell them who you were to get the $25 from? A. No.

"Q. Who was Roy Stark's note payable to?

"A. F. C. Lewis; I think his name is F. C. Lewis; it is F. Lewis, anyhow.

"Q. Now, why did you take these notes in the name of Lewis?

"A. Mr. Tuman told me to take them in the name of Lewis.

"Q. When did he tell you that?

"A. I think that I got that at the same time I got the descriptions of the land.

"Q. Well, then, didn't you have a talk with Mr. Tuman about this at all?

"A. Not a great deal, Mr. Pier."

I did not drop Mr. Cook. He came to me. It is impossible for me to say why Mr. Cook did or did not do anything. I don't know whether Cook liked the timber or not. He didn't express himself to me at all.

My idea in sending word to Mr. Cook about this good piece of timber land was so I could make some money out of it by selling him a description of the land. That is, I knew the general description of

(Testimony of J. E. Remick.)

it. I had no bargain with him before I started out.

"Q. After once you pointed it out to him and you did not have any bargain with him beforehand, he was not under any obligations to pay you anything for your information? [1014]

"A. He was not.

Cook did not tell me anything about what the timber land was. I think he said that he would think that matter over and if he concluded to have anything done that he would send me a description of the land. That is my recollection of it.

"Q. 'If he concluded to have anything done.' What do you mean by that?

"A. If he concluded to do anything in the matter.

"Q. That is if he wanted that land taken up and he was willing to finance the project; is that the idea?

"A. He never said anything about that. I always understood that Mr. Tuman was the man in the matter, up to quite a long while after."

At that time I had not heard that Mr. Holbrook was connected with the timber matter at all. I just understood it was Mr. Tuman. I had never seen Holbrook up to that time. I think I first met Mr. Holbrook at a fourth of July celebration given in Prattville. There was a dance one night; I think that is the first time I saw Holbrook, in 1902. I don't remember if Heppe told me that he was getting a location fee of $25. I don't know where I found out that Heppe was getting such a fee. I

(Testimony of J. E. Remick.)

don't think Mr. Tuman told me he was paying Heppe a location fee of $25.

"Q. How did you and Mr. Tuman come to agree upon the $25 location fee? [1015]

"A. I told him that I understood that Heppe was getting a $25 location fee.

"Q. Where did you get that?

"A. I told you I didn't know where I did get that."

I was willing to work on the same basis that Heppe was. I don't remember whether I advanced the Aids some money to pay their expenses on the trip when they came over to look at their land. I don't remember sending word to anyone to advance the Aids money to make their final proof. I did not send anyone to Meadow Valley to meet White when he went to look at the land. I told him there would be somebody there to meet him. That is all I knew about it. Tuman told me there would be a man there. Tuman did not tell me what his name was, but afterwards I knew that his name was Vincent Baker. I cannot remember now how I knew how much money was to be sent to Halls for their publication fee. They might have sent me a bill. I don't remember what arrangement I had with them as to sending me a bill as to certain entries. I might have had some arrangement. I don't think I saw Mr. Hall, though, during any of this. I did see him when I went to get these publication contracts and he did not have them, but I didn't see him again. I could not say just when it was that Mr. Tuman advised me

(Testimony of J. E. Remick.)

not to make any contracts. It was sometime prior to my locating any of these people. I think, though, that I got that through a letter the same time I got the descriptions. [1016]

"Q. What advantage was there in this system then, if you were not to make any contracts, what was the idea, what was the purpose of doing this operating, if you were not making contracts?

"A. Whose purpose?

"Q. Tuman's purpose and your purpose?

"A. My purpose was to make that $25.

"Q. Your purpose was to make that $25?

"A. Yes.

"Q. Tuman wanted you to get these people and locate them on the land, to get them to understand they would get the $100 if they located on it and sold it, but not to make a contract with them; is that the idea?

"A. I couldn't say what Mr. Tuman's ideas were."

Mr. Tuman's instructions to me were that he would loan these people money or that I could loan it to them for him; be careful not to make any contracts, and he particularly laid stress on the fact that I was to keep account of all money that I expended, and that was about all; and the descriptions of the land were furnished me by Mr. Tuman, and I was going to further add that the descriptions were furnished by letter. There was nothing said in the letter at all about there being at least $100 profit in it for the entrymen, or at any other time.

"Q. You were to get the $25 but you were to get

(Testimony of J. E. Remick.)

the $25 when the land was turned over?

"A. Nothing was said in that respect either."

This conversation about the $25 was had when I approached Mr. Tuman and told him that I understood that Heppe was getting a $25 location fee and that I would like to make that $25. That was before Mr. Tuman looked at the [1017] land. That is when Mr. Tuman came out to the Diamond Mountain Mine. The inducement I had to offer to the people to get them to take up the land and which I offered to Cooksey and Huntington, was $100.

"Q. Where did you get any authority to make such an offer as that?

"A. That is what I understood that Mr. Heppe was giving them.

"Q. That was what you understood they were getting from Heppe; you knew that Heppe was working for Tuman, that is what you understood?

"A. That is my understanding in the matter, that he was working for Tuman.

"Q. Did Tuman ever tell you that Heppe was working for him?

"A. No, subsequently he did; but not at that time."

I never had any personal talk with the Savercools before I let them have this description of the land. I don't think that I ever had any conversation with them after that in regard to the land, nor did I have any correspondence about the lands with them. I got a location fee for locating them on the land, or $25, for each of their claims. I got a $25 location

(Testimony of J. E. Remick.)

fee for locating each of the following persons: Edward L. Cooksey; Huntington; each of the three [1018] Stark boys; my brother Lem; the two Tanners; Seelight; Alex Cameron; Larry Nisson, that is L. A. Nisson; B. F. Wardlow; James J. Taylor; George Hall; Della Hall; Mabel Chamberlain; Andrew Isenberg; J. H. Kelly; Della P. Kelly; Frank Kruger; the four Savercols; each of the four Aids; J. W. Rhodes; Mamie and Joseph Ogle; Sylvester Eastman; Jacob G. Hensley; John Louis Gray; Elijah Taylor; R. C. Taylor; C. H. Butler; Joseph I. Kelley; Emma L. Kelley; John Zuschlag; George Cooksey; Bill Lawrence; Martha Zuschlag; Mollie Scott; Fred Scott; Elmer Ross; Carrie Ross. These location fees were paid to me when I settled with Tuman. I don't know when I had settlement with him. Sometime in 1903. I hardly think it was as late as the middle of 1903. I only had one account with Tuman, and I rendered him only one settlement as to what I was doing with the money. I never had a talk with him as to what I was doing with his money. At one time during these operations he advanced me as much as $2,500 at one time. It came to me in two checks, but I got it at one time. I don't know what is the smallest amount he ever advanced me at one time; I don't think he ever advanced me as small amounts as $100. I don't remember anything smaller than $400. He made the first advancement to me when I asked him for it. I could not fix the point of time. It was some time prior to Cooksey and Huntington making their final proof. I don't

(Testimony of J. E. Remick.)

think it was prior to their filing on the land. I could not say when he advanced me the last sum of money. The last money that I recall was when I was in Susanville with Charlie Huntington. I cannot recall that he ever personally handed [1019] me any money. One time I went to Prattville and his wife gave me some money. I don't know how much it was. I have not the slightest idea. I don't remember that Mr. Tuman ever sent me any money without my asking for it. I don't think I told him what I wanted the money for. I loaned the money to Robert Taylor because he asked for it and I let him have it. I notified Tuman that I had let him have the money when I made the accounting. I don't remember of ever letting him know of it before that time. When I would send for this money I would write to Tuman to Prattville and he would send it to Taylorville. Sometimes I would go to Susanville to get the money. I did not go to Susanville to get the money; I could give the check to whoever went, indorse it and then either my brother or somebody else would take the check over to Susanville and cash the check and distribute the money. I think that with the exception of this one time that Mrs. Tuman gave me some money personally, all the rest of the money came through the mail. I first met C. H. Butler when I took him out to show him the land. The same is true of Robert Taylor and Elijah Taylor, John Louis Gray. The first time I met John W. Aid was when he brought Isenberg over. I had never met his brothers or his father. I met them

(Testimony of J. E. Remick.)

the first time when they looked at the land.

"Q. On page 2907 of your testimony, you said, 'In 1902 I was working for Ed. Head in some work on his hotel in [1020] Prattville and became acquainted with Mr. Tuman and some other timbermen that were in that locality, Mr. Rodgers and Mr. Cook. I saw the trend of the affairs and on going back to Taylorville early in the spring of 1902 I went out and looked over a couple of bodies of timber land, one of them in what is known as the 25–10 district and another in township 25–12; and I sent word to Mr. Tuman and also to Mr. Cook that I could show them a couple of bodies of good timber land. Mr. Tuman was the first one that responded and I showed him the land first, or told him.' Now, what did you mean by that 'I saw the trend of the affairs?'

"A. Just a minute, I see a mistake in there. It says 1902 I was working for Head; it was 1901 I was working for Head.

"Q. It is 1902 you were working for Head, but it was 1901, as we are to understand? A. Yes.

"Q. What did you mean by that 'I saw the trend of the affairs?'

"A. I saw that timber land was being acquired, being looked over by different timbermen, and that it would probably become valuable.

"Q. That is, that the timbermen were out there acquiring land?

"A. Timbermen were out there looking up land.

"Q. And desiring to get entrymen to take land up? A. Nothing of that kind." [1021] I saw

(Testimony of J. E. Remick.)

nothing of that kind at that time. Well, I suppose I saw that timbermen wanted to get the timber land. Mr. Cook, Mr. Tuman and Mr. Rogers were looking over timber land. In 25–12 there were only four claims taken there and then it was made a reserve. Curtis, Collins and Holbrook Company didn't get those four claims. They are still owned by the entrymen, or were the last I knew. When I met Tuman at Heads, when we were playing cards in the evening and when I got very well acquainted with him, we did not discuss the timber land matter at all at that time. He did not tell me what he was doing in that part of the country or what his business was. He never even told me that he was interested in timber land. I think Edward L. Cooksey and John Huntington got $100 profit on their land. I don't know when I was at the Park Hotel at Chico the first time. I had been there before this suit was commenced. The last time I was there was a couple of weeks ago when I went there for the purpose of looking in the cloakroom, which is just under the stairway and the stairway is probably seven feet wide. You could not be seen by anybody in the lobby if you closed the door. If you step behind the wall you will be in a very uncomfortale position as the stairway comes down there and makes it very low. I did not act as a proof witness in any case. I was only advertised as a proof witness in one case that I remember. Ordinarily the entrymen went out in groups of four or more and each acted for the other. [1022] At the time I was working at Head's Hotel I was a miner. My daily

(Testimony of J. E. Remick.)

pay was varied. I would sometimes take contracts on a piece of work; sometimes I would not make anything and sometimes I would make $10 or $12 a day. If I had no mining I did such work as putting a foundation under a building or rough carpenter work. At that kind of work if I took a contract I would make more, and if I did it by the day, I think I got, from Head while working there, $2.00 a day and board for myself and wife. At that time I lived in Taylorville and was married. I went out and interviewed the entrymen after these suits were brought, when the subpoenas were served on them. Some of the people that I knew nothing about, I asked them something in regard to their entry. For instance, I went and got Rebecca Heppe's authorization. I asked her about the way she happened to take up her land. I also got Self's authorization and talked with him about how he came to take up his land. If I got the facts I reported them to Mr. Shurtleff and Mr. De Forrest. I don't know whether any money was advanced to George Cooksey. I had not heard that $25 was advanced or paid to Edward Cooksey on account of expenses in coming down at the time they were summoned.

"Q. Had you ever heard there was any such money advanced to him? A. I heard it from you.

"Q. I mean other than what I said.

"A. Not that I remember of." [1023] I went to Heppe and asked him one day at Prattville, just when I could not say, about locating on some timber land. I don't know how long it was before I began

(Testimony of J. E. Remick.)

locating people on timber land. I did not locate some timber land myself because my wife was sick and I was waiting for her to get well so that we could both locate on the land, and it was withdrawn from entry before she was able to be around. I went to Heppe and asked him to locate me on land. My wife was sick pretty nearly a year. I just kept waiting from day to day. Heppe just said, "I will see you," and he never gave me any description and I never asked him again. I think I told Aid I could furnish him the final proof money, or see that he could get it, something to that effect. I don't remember advancing him some expense money when he started out to file on the land. I have been present in court during the taking of all testimony and have heard what most of the witnesses have testified to. I was out of the court sometimes; just stepped out of the room for awhile.

"Q. You would always be here early in the morning to see the witnesses when they came before the court, would you not? A. Oh, no.

"Q. You would get here as early as nine o'clock in the morning to see the witnesses, would you not?

"A. Oh, no.

"Q. You frequently came here at nine o'clock in the morning to see the witnesses? [1024]

"A. I do not think so.

"Q. On the morning the Aids came, John Aid and Jacob Aid, and the Taylors, weren't you here at a quarter of nine that morning, waiting for them to come? A. I was not.

(Testimony of J. E. Remick.)

"Q. You were here at nine o'clock, were you not?

I do not think so. I do not think I got up here, I don't remember of any time more than twenty minutes prior to the time set to open court.

"Q. Do you remember when I came down and was talking to Aid and his father, that you took John Aid and went down the hall? A. I did.

"Q. And you talked with him down there?

"A. I talked with Aid down there.

"Q. And you also talked with all of the witnesses with whose entries you had anything to do, while they were out here in the hall, did you not?

"A. I did not.

"Q. You were with them frequently, and talking to them while they were waiting outside?

"A. I was not.

"Q. Never talked to any of them?

"A. I talked to some of them, but not to all of them.

"Q. Did you talk to most all of them?

"A. Why a good many of them are personal friends of mine, and I shook hands with them, talked to them like I would to any friend. [1025]

"Q. And you were particularly friendly and you engaged in conversation with Robert Taylor and Elijah Taylor and John Gray and all of those?

"A. I don't know as I was any more friendly with them than anybody else.

"Q. I know, but you engaged them in conversation, you were here early to do that?

(Testimony of J. E. Remick.)

"A. I think you and I were talking to them at the same time.

"Q. You were here first, were you not?

"A. I do not think I was; I think we came down stairs from your office.

"Q. You met them here in the hall?

"A. You were with them.

"Q. I had not seen them until that morning until I came down stairs.

"A. I came to court with them?

"Q. Yes.

"A. I don't remember that I did.

"Q. You brought them to my office, didn't you?

"A. I brought them from here up to your office; they asked where the office was.

"Q. Didn't you remark to Elijah or Robert Taylor that the case was all going your way?

"A. Not that I remember of.

"Q. Made a remark to that effect?

"A. I had no means of knowing how the case was going.

Mr. SHURTLEFF.—Suppose he had. [1026]

Mr. PIER.—That has its effect upon—

The MASTER.—I think, Mr. Pier, the whole thing is immaterial.

Mr. PIER.—I will take an exception.

The MASTER.—Do not interrupt me, Mr. Pier, when I am talking. If you did not examine your witnesses beforehand I should consider you were remiss; if Mr. Shurtleff did not examine the witnesses I should consider that he was remiss. But I do not

(Testimony of J. E. Remick.)

think time should be consumed in going over immaterial matter. It has no evidentiary effect at all, not a bit.

Mr. PIER.—The purpose of this testimony, I wish it to appear in the record, I objected on the same grounds to an examination of Mr. Van Ornum with respect to Mr. Heppe and the Court considered that very material in the case of Mr. Heppe and I placed both Heppe and Remick in the same class, so far as this case is concerned, and I think it is material and bears upon the case just as much one way as it does on the other, except that Heppe is not in the employ of the company at this time while Mr. Remick is.

The MASTER.—You can have your exception.

Mr. PIER.—I think that is all."

Redirect Examination.

I located the Boyntons, I think, in 1902. I had nothing to do in any way concerning the lands which were acquired by the application of scrip. The lands to which I directed Mr. Tuman's attention were lands other than lands that were scripped. [1027] People came to me and asked me to locate them on land. Some of them I refused. I remember a man by the name of Barnes whom Tuman sent to me; and a man named Wing, Charlie Huntington's wife and a lady named Mrs. Ball. The first time I met Mr. Holbrook was at a dance on the 4th of July, 1902. I never discussed timber land with him in any way. I remember some entrymen coming down here at the time they were served with subpoenas to answer the complaint and their being in Mr. Shurtleff's office. I

(Testimony of J. E. Remick.)

think the two Cooksey boys were there; I don't remember anyone else; there were four or five. At that time I heard Mr. Shurtleff say something in reference to their expenses in coming there in response to the subpoenas. I think Mr. Shurtleff was talking something about the expenses, but I didn't pay much attention to that. I heard him say that they were out whatever they were out in the interest of the company, and that he wanted it distinctly understood that whatever he did or might do was not to influence their testimony in the matter. I don't remember if Mr. Shurtleff did pay some small amounts in relation to their expenses.

Mr. SHURTLEFF.—"I will admit that I did. I don't remember how much but I did."

The WITNESS.—"I remember your talking with them but I was talking with one of them there about some personal matters. Maybe it was one of the Taylors." [1028]

Testimony of Charles E. Gregory, for Complainant.

CHARLES E. GREGORY, called as a witness for complainant, testified as follows:

I reside at Winters, California. I am a fruit-grower. During the years 1901, 1902, 1903, my residence was San Francisco. At that time I was in the real estate business. I know Chas. H. Holbrook, Jr. I did know his father, Chas. H. Holbrook, Sr. At one time Mr. Holbrook, Jr., was employed as stenographer in the office of Easton, Eldridge & Co. where I was employed. I was the manager of the country

(Testimony of Charles E. Gregory.)

business there. I became very well acquainted with him during that time. I had some subsequent dealings with Mr. Holbrook, Jr. I had various transactions with them. I made one or two contracts and got some land for them. I never bought any timber land in Plumas County.

"Q. Do you know whether or not any timber land was ever placed in your name by anybody?

"A. Yes, several deeds were placed in my name."

I cannot recall what time that was. I was in the Crocker Building and it was a good many years ago. It was somewhere about 1900. It was a long time before 1900—it might have been before 1900. I was in the Crocker Building some seven or eight years. It was Chas. H. Holbrook, Jr., who spoke to me about putting these deeds in my name. He said he wanted to know if I had any objections to putting some timber land [1029] in Plumas County in my name and I told him I did not. I asked him why he wanted to do it and he said simply because the Pennsylvania Lumber Company was buying a lot of property and they did not care to let everybody know in the county that it was theirs, because it would raise the price of land. I did not question him any further, because it was a common thing to do that; in fact, at that time I had some of my own property in his name. I had no interest, whatever, in this timber land. I do not think any of the persons that conveyed any of the land to me ever came to my office, I do not think so.

(Testimony of Charles E. Gregory.)

"Q. Did you see any of the persons that conveyed any of the land to you?

"A. I do not think anyone came to my office, I do not remember, I do not think so."

I never paid a cent of money out for any of this land. I didn't know what land was in my name at any time and I don't know now. I did not know how many acres were standing in my name. I do not know to whom I conveyed the land subsequently; I probably did but I made no note of it because I had implicit faith in Chas. H. Holbrook and I know he would not give me any deeds unless the record title was in my name. I let it drop at that. When I executed the deeds conveying the land to somebody else I never checked the deeds which I executed to see whether or not they corresponded with the deeds which had conveyed the same land previously to me. [1030] I had nothing to do with the preparation of the deeds that I executed.

"Q. Will you state just how it happened that you executed the deeds. Just tell the circumstances under which they were executed.

"A. There were two or three pieces in Plumas County that I secured for the Curtis, Collins and Holbrook Company. They were patented lands from J. Alfred Magood and I sent over there and got a contract and there was another smaller piece that I recall now, I don't recall who the owner was, and he came to my office and asked me about that memorandum he had loaned me and I found it on my desk and that started a little business that we had together,

(Testimony of Charles E. Gregory.)

and some months went by and there was nothing done and one day he came to my office with quite a bunch of deeds; I think it was 52 deeds, and he asked me if I had any objection to having the Plumas County land put in my name and that the Pennsylvania Lumber Company had bought and he acted for them as agent. I said no it would not make any difference how much they put in my name and I signed them there and he took them away.

"Q. Did he ever name the Curtis, Collins and Holbrook people to you?

"A. He did. He always claimed to me that they were the agents of the Pennsylvania Lumber Company, that is the way he put it to me."

Mr. Holbrook put it that way to me. Just in a casual way. I did not question who they were. During all the time this land was in my name I was holding it confidentially for whomever Mr. Holbrook, Jr., was representing, either for him personally or for whoever his principal might be. [1031] I had nothing to do with the purchase of the land or the paying out of any money or anything of that kind. I, myself, never handled the deeds covering the lands to me from the entrymen. I did not know what was in my name. All I know is he brought these deeds to me to convey and I took his word that they were all in my name. I executed the deeds that he brought. I never saw the deeds of the grantee that I remember of. Mine were all the grantor. The deeds were never handed to me and I never held them in my possession. I do not remember him giving me any deeds

(Testimony of Charles E. Gregory.)

at all. I do not know who owned the lands previous to the lands being placed in my name. I never paid any of the taxes on the land nor bothered about paying of the taxes at all. I never knew whether the taxes were paid or unpaid.

"Q. Do you know whether or not you ever conveyed any land to William E. Wheeler?

"A. I don't know him. I might have known him at the time but I have forgotten."

Any connection that I may have had with the land was an accommodation and intended as such for Mr. Holbrook, Jr.

Cross-examination.

I could not tell you the date upon which I had the first conversation with Mr. C. H. Holbrook, Jr., with [1032] reference to the taking of this land in my name. My memory is clear to the effect that he told me that these lands in Plumas County were being acquired for the Pennsylvania Lumber Company and he wanted me to take the title in my name.

"Q. You are certain, also, positive, that he told you he was the agent of the Pennsylvania Lumber Company.

"A. Yes, he told me that repeatedly.

"Q. He told you repeatedly that he was the agent?

"A. That Curtis, Collins and Holbrook Company was the agent.

"Q. For the Pennsylvania Lumber Company?

"A. Yes.

"Q. And not for himself personally? A. No.

"Q. Well, now, I wish that you would search your

(Testimony of Charles E. Gregory.)

memory, Mr. Gregory, and see if you can fix the point of time that you first had this conversation. At the time that you had this conversation did you then and there *made* deeds or did he come to you and say he was going to do that and wanted to do it in the future?

"A. I cannot recall that. He might have come. He was in my office frequently. He might have mentioned it a day or two before that.

"Q. This means a great deal, what he might have done.

"A. I cannot recall. I could not say positively whether he brought them in that way or not because in the [1033] office of Easton, Eldridge & Co. it was such a common thing to do that.

"Q. What I am endeavoring to ascertain is as to whether in your first conversation the first mention that he made of these deeds to you, that he stated that the Curtis, Collins and Holbrook Company was the agent of the Pennsylvania Lumber Company and that the Pennsylvania Lumber Company was acquiring a large body of land and wanted to take the title for some property in your name but not the company's.

"A. Yes, that is my recollection."

My recollection is that he brought me 52 deeds to sign.

I don't remember who the grantee was. I think there were various grantees. My recollection is that there were various names in the deeds. They were not all executed at one time. He brought them in at

(Testimony of Charles E. Gregory.)

different times. My recollection is that there were 52 deeds executed at one time but subsequent to that there were other deeds. I do not remember as a distinct fact when I executed the first deed, but it is my recollection that the first deed was the big number of deeds.

"Q. Was it at that time that he made this arrangement with you or had he made it before?

"A. No, it was at that time.

"Q. So that that time he made these arrangements and asked you to execute these deeds? A. Yes.

"Q. How do you account for the fact that he had [1034] been assembling this land from time to time and put the title in your name without ever having told you about it?

"A. I don't know anything about it.

"Q. Do you think that was the fact?

"A. That is my recollection of it.

"Q. That he told you he had done that and without getting your consent?

"A. He might have talked to me a few days before; I don't remember whether he did not not; I could not say.

"Q. A few days before when?

"A. Before the execution of these deeds.

"Q. Was it not before taking the title in your name? A. I do not think so; I don't remember.

"Q. Suppose it should appear from Mr. Holbrook's testimony that you were mistaken here.

"A. It is possible that I might be mistaken about it. I won't be sure about it."

(Testimony of Charles E. Gregory.)

I am not sure when I had the first conversation. This is my testimony: That Mr. C. H. Holbrook, came to me and represented that the Curtis, Collins and Holbrook Company were the agents for the Pennsylvania Lumber Company; and that the Pennsylvania Lumber Company was acquiring a lot of land in Plumas County, and for some reason that the company did not want that known and asked permission to take the title in my name; and I was to hold it and when he requested a deed to someone I would convey. (Foregoing summary of testimony given under leading questions.) [1035]

Redirect Examination.

I had no other dealings in which I held the title to timber lands in Plumas besides the ones as to which I have just testified. [1036]

Testimony of Charles E. Gregory, for Defendants.

CHARLES E. GREGORY, called as witness for defendants, July 22, 1913, testified as follows:

I remember that I testified that these properties were taken in my name and that I subsequently conveyed them to the Curtis, Collins and Holbrook Company, when I was here before. At the time I received the titles or at any time prior to the commencement of these suits by the government I had no knowledge in relation to the manner in which these lands were acquired and what was done in the field and how it was done. Prior to being interviewed in reference to this case, I had never heard from any source, any person or in any manner any rumors or

(Testimony of Charles E. Gregory.)

talk that these lands had been acquired through fraud or misrepresentation or dummy entries. (Exception to materiality of foregoing testimony.) I never discussed with Mr. Chas. H. Holbrook, Sr., or Chas. H. Holbrook, Jr., prior to the commencement of these actions by the government the manner of acquiring the land and what was done in the field, etc., by that I mean the manner of making the entries. I have never met Geo. E. Tuman or T. D. Collins, or E. S. Collins or J. G. Curtis, or D. G. Curtis. I never knew any of the company excepting the two Holbrooks. I don't know Mr. Moulton of the Bank of California. I never discussed with either of the Curtises or the Collinses or Mr. Moulton these lands in any manner. I [1037] heard all those names read. (Referring to the names of the entrymen involved in these suits.) I paid particular attention to the names read and I don't know any of them. I never discussed with any of them their entries or how they procured the land or anything of that kind. Up to the time I made my affidavit (referring to an affidavit secured from him by a government representative, Mr. George Clark) I had no information, never had heard that the Government was charging fraud or that any charge was made by me after the fire and some time after I had parted with the title to the lands. My recollection is that I was living on my farm at the time the attorney interviewed me. [1038]

Testimony of Charles A. Shurtleff, for Defendants.

CHARLES A. SHURTLEFF, called as a witness for the defendants, July 9, 1913, testified as follows:

Witness explained circumstances under which a certain agreement was executed eliminating the word "Trustee" from the contract dated the 19th day of December, 1901, and which contract is Defendants' Exhibit "B," and the contract eliminating the said word "Trustee" was introduced in evidence, marked Defendants' Exhibit "D," and is in the words and figures following:

Defendants' Exhibit "D."

"THIS AGREEMENT, made and entered into this 31st day of December A. D. 1901, by and between Charles H. Holbrook of the City and County of San Francisco, State of California, the party of the first part, and T. D. Collins, and J. G. Curtis of the Counties of Forest and McKean of Pennsylvania, the parties of the second part,

"WITNESSETH: That Whereas, the said parties did heretofore, to wit: on the 19th day of December, 1901, enter into a contract for the sale by the said party of the first part to the said parties of the second part of forty-two thousand three hundred and eighty (42,380) acres of timber lands, situated and being in the Counties of Tehama and Plumas, State of California, and,

"WHEREAS, the said parties desire to modify said contract in the following particulars,

"NOW THEREFORE, it is mutually agreed by the parties hereto that said above mentioned contract

shall be and is hereby modified and changed in the following particulars, to wit: The word 'Trustee' appearing immediately after the words "G. Howard Thompson," in the fifth paragraph, page one of the above mentioned contract is hereby stricken out and said fifth paragraph of said agreement is hereby amended so as to read as follows, to wit: [1039]

" 'It is agreed between the parties hereto that the whole of said Forest Reserve shall be properly conveyed and deeded to G. Howard Thompson, of San Francisco, hereinafter referred to as 'Trustee,' to be held by him in trust for the purposes and upon the terms in this agreement expressed.'

"It is further agreed that this agreement shall be annexed and attached to said agreement of December 19th, 1901.

"IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals this 31st day of December, A. D. 1901.

"_____ (Seal)
"_____ (Seal)
"_____ (Seal)

"State of California,
"City and County of San Francisco,—ss.

"On this 31st day of December in the year one thousand nine hundred and one, before me _____, a Notary Public in and for said City and County, residing therein, duly commissioned and sworn, personally appeared Charles H. Holbrook, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

"IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, at my office in the City and County of San Francisco, the day and year in this certificate first above written.

"_____.

"Notary Public in and for the City and County of San Francisco, State of California.

"I, the undersigned, Charles A. Shurtleff, named as attorney in the agreement dated the 19th day of December, 1901, of which the foregoing agreement is a modification [1040] and change, hereby acknowledge notice of said modification and change.

"Dated San Francisco, December 31st, 1901.

"_____.

"I, the undersigned, G. Howard Thompson, named as Trustee in the agreement dated the 19th day of December, 1901, of which the foregoing agreement is a modification, hereby acknowledge notice of said modification and change, and hereby accept the same.

"Dated San Francisco, December 31st, 1901.

"_____.

"I, the undersigned, Charles A. Shurtleff, named as attorney in the agreement dated the 19th day of December, 1901, of which the foregoing agreement is a modification and change, hereby acknowledge notice of said modification and change.

"Dated San Francisco, ———, 190—.

"_____.

"I, the undersigned, G. Howard Thompson, named as Trustee in the agreement dated the 19ths day of December, 1901, of which the foregoing agreement is a modification and change hereby acknowledge notice

of said modification and change, and hereby accept the same.

"Dated San Francisco, ————, 190—.

"_____.

A certified copy of the Articles of Incorporation of the Curtis, Collins and Holbrook Company was also offered in evidence and marked Defendants' Exhibit "E," and is in the words and figures following:

Defendants' Exhibit "E."

"No. 24203.

"Frank C. Jordan, Secretary of State. Frank H. Cory, Deputy.

[1041]

"STATE OF CALIFORNIA.
"DEPARTMENT OF STATE.

"I, Frank C. Jordan, Secretary of State of the State of California, do hereby certify that I have carefully compared the annexed copy of Articles of Incorporation of 'Curtis, Collins and Holbrook Company' with the certified copy of the original now on file in my office, and that the same is a correct transcript therefrom, and of the whole thereof. Also that this authentication is in due form and by the proper officer.

"WINESS my hand and the Great Seal of State, at office in Sacramento, California, the 30th day of October, A. D. 1912.

"[Seal] FRANK C. JORDAN,
"Secretary of State.

"ARTICLES OF INCORPORATION

of the

"CURTIS, COLLINS AND HOLBROOK COMPANY.

"KNOW ALL MEN BY THESE PRESENTS: That we, the undersigned, a majority of whom are citizens and residents of the State of California, have this day voluntarily associated ourselves together for the purpose of forming a corporation under the Laws of the State of California.

"And we Hereby Certify:

"First; That the name of said Corporation shall be and is: 'Curtis, Collins and Holbrook Company.'

"Second: That the purposes for which it is formed are: To manufacture, buy, sell, import, export, prepare for market and generally deal in, in every manner whatsoever, timber, lumber and lumber products; to purchase, own,hold, lease, let and otherwise acquire, timber, timber rights, timber claims, timber lands and all kinds of real estate and lands in and throughout the State of California; to buy, own, hold, use, sell, convey, grant, lease, let, mortgage, till, improve, develop and deal generally in, real estate and lands in the State of California; to [1042] mortgage, hypothecate or pledge personal property; to lease, let, erect, build and own offices, warehouses, stores and other buildings; to erect, build, own, lease, let and operate mills and factories; to acquire, build, erect, own, hold, purchase, lease, let, mortgage, grant, bargain, sell and convey, any and all kinds of machinery used in manufacturing

lumber and lumber products in any and all of its branches; to buy, own, use, appropriate, hold, locate, develop, improve, lease, let, mortgage, grant, bargain, sell and convey water rights and privileges; to lease, let, erect, buy, own and otherwise acquire, and to operate power plants, and to use, sell and otherwise dispose of said power plants, or the power produced thereby and therefrom; to deal in timber, lumber and all products and articles manufactured from lumber and to transport and provide ways and means to transport the same to market, and to market and sell the same; to own, hold, use, lease, let, mortgage, grant, bargain, sell, assign and convey franchises, rights of way and other similar rights and privileges of every nature and description; to buy, build, construct, own, sell, lease, let, equip, maintain and operate in connection with, and in carrying on said business of said Corporation, railroads, tramroads 'V' flumes, flumes, water ditches and conduits, and to equip, maintain and operate said means of transportation by steam, electricity or other power; to buy, build, construct, lease, let, sell and operate ditches, pipe lines, conduits and flumes for conducting and conveying water, or for any purposes whatsoever; to own, sell and generally deal in goods, wares merchandise and any and all kinds of personal property, including the shares of stock of other corporations, and also bonds, notes and personal securities of every kind; to buy, own, sell, acquire, operate, carry on, [1043] let and mortgage electrical plants and properties, and generally apply, deal in and use electricity in all its branches; to buy, sell, acquire,

own, operate, lease, let and mortgage all kinds of electrical apparatus, appliances and machinery; to erect, maintain and operate a private telephone line or lines; to buy out persons, partnerships, firms, companies and corporations, carrying on, engaged in, conducting or having a business similar to that of this Corporation, or included in, or covered by any of its branches, purposes and objects; to buy or otherwise acquire, hypothecate, pledge or sell, stock in other corporations; to buy, own, sell and general deal in all kinds of live stock; to establish and maintain agencies of and for said Corporation, and to appoint and employ agents whenever it may be deemed best and proper by said Company, and generally to do any and all acts or things necessary, proper or expedient to carry on and transact the business of the Corporation, and to accomplish the purposes for which it is organized.

"THIRD. That the place where the principal business of said corporation is to be transacted is the City and County of San Francisco, State of California.

"FOURTH. That the term for which said Corporation is to exist is Fifty (50) years from and after the date of its incorporation.

"FIFTH. That the number of Directors of said corporation shall be Seven (7) and the names and residences of the Directors who are appointed for the first year, or to serve until the election and qualification of their successors, are as follows, to-wit: [1044]

"Name.	Place of Residence.
"J. G. Curtis,	Ludlow, Pennsylvania.
"T. D. Collins,	Nebraska, Pennsylvania.
"D. G. Curtis,	San Francisco, California
"E. S. Collins,	Ostrander, Washington.
"Charles H. Holbrook,	San Francisco, California.
"Irving F. Moulton,	San Francisco, California.
"Charles H. Holbrook, Jr.,	San Francisco, California.

"SIXTH. That the amount of the capital stock of said Corporation is Five Hundred Thousand Dollars ($500,000.00), and the number of shares into which it is divided is Five Thousand (5,000) of the par value of One Hundred Dollars ($100) per share; that the amount of said capital stock which has been actually subscribed is One Thousand Four Hundred Dollars ($1,400.00) and the following are the names of the persons by whom the same have been subscribed, to wit:

"Name.	No. of Shares	Amount.
"J. G. Curtis,	Two	$200.00
"T. D. Curtis,	Two	$200.00
"D. G. Curtis,	Two	$200.00
"E. S. Collins,	Two	$200.00
"Charles H. Holbrook,	Two	$200.00
"Irving F. Moulton,	Two	$200.00
"Charles H. Holbrook, Jr.	Two	$200.00

"IN WITNESS WHEREOF, We have hereunto set our hands and seals, this 14th day of August, A. D. 1902.

"1902—J. G. CURTIS. (Seal)
"1902—T. D. COLLINS. (Seal)
"1901—D. G. CURTIS. (Seal)
"1902—E. S. COLLINS. (Seal)
"CHARLES H. HOLBROOK, (Seal)
"IRVING F. MOULTON. (Seal)
"CHARLES H. HOLBROOK, Jr. (Seal)

[1045]

"State of California,

"City and County of San Francisco,—ss.

"On this 14th day of August, A. D. one thousand nine hundred and two, before me Matthew Brady, a Notary Public in and for said City and County of San Francisco, residing therein, duly commissioned and qualified, personally appeared J. G. Curtis, T. D. Collins, D. G. Curtis, E. S. Collins, Charles H. Holbrook, Irving F. Moulton and Charles H. Holbrook Jr., known to me to be the persons described in, and whose names are subscribed to, and who executed the within and annexed instrument and acknowledged to me that they executed the same.

"IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official Seal, in the City and County of San Francisco, the day and year in this Certificate first above written.

"[Seal] MATTHEW BRADY,

"Notary Public in and for the City and County of San Francisco, State of California.

"State of California,
"City and County of San Francisco.

"I, Albert B. Mahoney, County Clerk of the City and County of San Francisco, State of California, hereby certify the foregoing to be a full, true and correct copy of the original Articles of Incorporation of the Curtis, Collins and Holbrook Company filed in my office on the 14th day of August A. D. 1902.

"ATTEST my hand and my official seal this 14th day of August, A. D. 1902.

"ALBERT B. MAHONEY,
"County Clerk.
"By Joseph Riordan,
Deputy County Clerk. [1046]

"[Endorsed]: Filed in the office of the County Clerk of the City and County of San Francisco, State of California, this 14th day of August, A. D. 1902.

"ALBERT B. MAHONEY,
"County Clerk.
"By Joseph Riordan,
"Deputy Clerk.

"[Endorsed]: Filed in the office of the Secretary of State the 15th day of August, A. D. 1902.

"C. F. CURRY,
"Secretary of State.
"By J. Hoesch,
"Deputy.

"Record Book 138, page 298.

"[Endorsed]: Articles of Incorporation. Certified Copy."

(Testimony of Charles A. Shurtleff.)

Wednesday, July 23, 1913.

Further Direct Examination.

So far as the records of my office disclose, the last deed from G. Howard Thomson to the Curtis, Collins and Holbrook Company was recorded on the 3d day of October, 1902. We do not seem to have complete records between the recording of the first and the last deeds. We have no abstract of this company's lands.

I reside in San Francisco, and my occupation is that of an attorney at law. I have been practicing for upwards of 30 years. I know D. G. Curtis, J. G. Curtis, E. S. Collins, T. D. Collins, George E. Tuman, J. E. Remick, Charles H. Holbrook, Sr., and Charles H. Holbrook, Jr. I met D. G. Curtis some time in the latter part of 1902 and at the same time I met T. D. Collins, E. S. Collins and J. G. Curtis. It was after the signing of what had been offered in evidence here by the defense as Respondents' Exhibit "B." Mr. Holbrook, Sr., served on a petit jury when I was assistant United States Attorney and it was at that time that I first met him. I met Charles H. Holbrook, the son, after I resigned as Assistant United [1047] States Attorney, probably in 1891 or 1892. He was at that time employed in the office of the Kern County Land Company. I don't know exactly when I first met Mr. Tuman. It was some time, however, after 1902. I don't think I ever met J. E. Remick until he entered the employ of the Curtis, Collins and Holbrook Company as a caretaker, some time since the fire of 1906.

(Testimony of Charles A. Shurtleff.)

"Q. What business, if any, have you had with Mr. C. H. Holbrook, Sr.?

A. In the latter part of 1901 Mr. Holbrook and his son Charles came to my office one afternoon and he said that he had been east and had a contract made with some parties there and he asked me to look it over and see if I thought it was sufficient; he explained his deal, must have explained his deal, but that interview was very short. I told him that it did not seem to me to be what he required, and his son was standing by, and he said, 'That is what I think,' then he asked me how long it would take to prepare another contract, and I told him, but I can't remember how long. He then asked me to prepare it at once and I did so; I did the work and he went east and I remember that he was away during Christmas. I remember that as an independent fact. Of course my memory is refreshed by the contract as to the exact date."

"A. (Intg.) I met all of them after the contract was signed, but I cannot remember the exact date. But I know I had not seen them when I prepared the contract. Then I prepared this contract for Mr. Holbrook and as I say he went east. Before he went east he said that there was going to be certain law work to be done and he said he would like to have these people employ me and he asked me to give him a reference and I gave him references to them and what was done in that respect I don't know; under that [1048] contract he began to gather the forest lieu and I examined the titles and

(Testimony of Charles A. Shurtleff.)

certified them when they were satisfactory to me, and issued a certificate, which I handed, according to my best recollection, either to Mr. Holbrook, Sr., or to Mr. Holbrook, Jr., and those certificates were under the contract to be presented to the Bank of California, but I have no distinct recollection of having delivered them myself. According to the records that I have, of course I want to explain that we have not any abstracts of this property, there was 49,939 acres deeded by Mr. Thompson to the company; so far as my records disclose that property was acquired as forest reserve; then the original contract, speaking for itself, shows 42,380 acres, leaving a difference of 7,559 acres, above the amount covered by the contract. In addition to that there was about 4,240 acres acquired through school lieu, and the rest of the lands owned by the company, which were about 72,000 acres, were acquired, I think, through stone and timber entries. Of course these records are substantially correct, I cannot give the exact figures. My fee for the work under the contract was paid by Mr. Holbrook, that is to say the deal was between Mr. Holbrook and myself. I am very certain that it was his check,—but I cannot testify to that,—but I had my negotiations with him.

The MASTER.—Q. When was that paid?

A. That was paid soon after the contract was filled. I think that when he finally filled under that contract, he came in and asked me for my bill and I rendered a bill which he thought was a little exces-

(Testimony of Charles A. Shurtleff.)

sive and I was required to make a reduction.

Q. Do your records show the date of that?

A. No; that was before the fire, and everything [1049] in my office was destroyed; I did not save as much as a *pin the* office in the fire of 1906; but it was paid very soon after the contract was filled. You see I did not examine the titles or have anything to do with the stone and timber entries, this is the only time I ever had anything to do with them if I may be permitted to say—do you object to my giving it in narrative form, Mr. Pier, or do you prefer to have the questions asked?

Mr. PIER.—That is all right.

A. The question has arisen here as to the time that the Collinses acquired the stock of the Curtises and of the Holbrooks. I am very certain that the Curtises sold to Mr. Collins before the Holbrooks did; before the deal with the Holbrooks was closed I made some examination, not of any abstract, but of the papers, to check them up as was testified here.

The MASTER.—Q. Of what papers?

A. That was done in this way. Mr. Holbrook submitted to me all of these stone and timber papers that he had and all of his title papers, but he did not have any abstracts. Then I suppose, although I have no distinct recollection of that, I checked up the stock-book before the deal was closed. That examination was simply to ascertain how the title papers stood, that is how the papers stood, how much was stone and timber and how much was under the school lieu and how much was acquired

(Testimony of Charles A. Shurtleff.)

under forest reserve. That examination, if you can term it such, was made at the request, as I recollect it, of Mr. E. S. Collins, and I simply stated to Mr. Collins in a brief way what I found; I did not become a director of the company until after Mr. Holbrook sold out." [1050]

I think it was in February, 1906, just before the fire, that I became a director of the Curtis, Collins and Holbrook Company. Up to that time I had never heard any intimation of any kind, character or description, that there was any misconduct or any fraud or any irregularity charged by any person or persons in connection with the acquiring of these lands. I cannot just exactly fix the date that I first had some intimation, but I think it was about the time that some of these affidavits were being taken; someone reported to me, and I believe it was Mr. Remick, I am not sure, that a Special Agent was taking these affidavits. I paid no attention to the matter; I probably reported to Mr. E. S. Collins—that would be the usual thing for me to do, but I am not certain even of that; nothing further was done even that, I might add, did not excite any suspicion on my part, and I never made any investigation of these matters until after this suit was commenced. The holding of the deeds off of the record, as to that, when I was elected secretary, which was just as soon as I was made a director, and I have been secretary ever since, I immediately advised the recording of these deeds, as Mr. E. S. Collins has stated, and we did record them; they

(Testimony of Charles A. Shurtleff.)

had been recording the deeds before, but as soon as I heard that these agents were making these examinations I endeavored to hasten the recording of the deeds. To the best of my recollection I never heard anything about these matters until after the fire. I am absolutely sure of that. At the time Mr. Collins bought out the Curtises, there was not the slightest intimation of those things to me or I would have reported it. I am sure that I had no knowledge. I am not sure that any knowledge that I had was communicated to me by Mr. Remick. [1051]

"Q. When did you become acquainted with Mr. Remick?

A. After the fire. I think that is correct; if I am wrong, Mr. Remick can correct me. I am very, very sure that the first intimation that I had in the matter was that agents were looking over this land in some way, and I presume it was about the time they were taking these affidavits; but nothing was done, we let them proceed with the investigation. Now, as regards the purchase of Mr. Tuman's stock by Mr. Collins: I represented Mr. Collins in that transaction. That stock was paid for by notes, I think; those notes were forwarded to me by Mr. Collins and I held them an indefinite length of time because it was at that time that Mr. Tuman was undergoing his reverses and embarrassments. I never in any shape, manner or form, directly or indirectly, ever discussed with Mr. Tuman what his evidence would be in this case, or how that transaction would influence his testimony. It was simply

(Testimony of Charles A. Shurtleff.)

closed with him just like any other deal; there was no talk; I never mentioned it to him. I made the deliveries and ended the transaction. There has been some evidence here about that $50 paid to one of the Savercools. Mr. Remick has given testimony as to that and I don't know as it is necessary for me to verify it. It is precisely as Mr. Remick says: Mr. Savercool claimed that he had been subjected to that expense and that he did it without any benefit to himself and it was paid; but there was no understanding or talk as to what his evidence would be. And as to these others that I stated here, just as counsel, there were five that came here in response to subpoena, and I think I heard of their presence here, but any way they came in and I paid them whatever their expenses were, of [1052] course, with the express understanding, as I said to them, whatever the truth was, they were to tell it. It was not for that purpose. I can't remember having discussed—I think I did ask one of them something about his entry." I may have met Mr. Remick before he was a caretaker of the company's land. Mr. Heppe was the first caretaker. I know I did not know Mr. Remick during the early part of these negotiations in 1902 or 1903 and along there.

"Q. Mr. Shurtleff, what do you know, if anything, touching the railroad scrip concerning which Mr. C. E. Swezy has testified?

A. As to the amount covered by that title I cannot remember; but I remember this circumstance,

(Testimony of Charles A. Shurtleff.)

I rejected the title because there had been a suit pending between the United States and the railroad company and in that suit according to my best recollection, the Government had been successful in part and the railroad in part; that judgment had not become a final judgment and I would not pass the title of it; I must have had an abstract of some kind. Mr. Swezy was very anxious that I should take it, and I think likewise Mr. Holbrook. I remember very distinctly of going to the Grand Hotel and having an interview with Mr. Swezy about it, I remember that clearly. I can almost describe the room we were in. I told Mr. Swezy that I could not take the responsibility, and he endeavored to assure me that it was all right. Then the two younger men, Mr. E. S. Collins and Mr. D. G. Curtis were here, and I am inclined to think that they came purposely to consider that matter, although I would not be positive about that; however, I am very sure that I was present in that interview with Mr. Singer because I can remember where his office was, remember being in it, and remember having the discussion with him; I am very certain that I went with them and [1053] that Mr. Swezy was mistaken about that, although I believe he did state he was not quite sure; and they took that. I wanted Mr. Swezy to secure some kind of a statement from the Attorney General that the Government was not going to appeal; he told me that neither side was going to appeal; neither the Government nor the railroad company, that they were going to accept

(Testimony of Charles A. Shurtleff.)

the situation. I told him that if the Attorney General would give me some expression to that effect that that would put it in a different light but they did not get it and they took the title and took the chances and it came out all right.

Q. Do you know when T. D. Collins purchased the stock of the Curtis, Collins and Holbrook Company belonging to D. G. and J. G. Curtis, about when?

A. I can't remember that exact date. I think they sold prior to Mr. Holbrook's selling, a little prior, I am quite positive of that; but the records, so far as they tend to refresh my memory indicate that Mr. Tuman, Mr. Whitworth, Mr. Wilson and myself went on the Board of Directors in February, 1906, and that leads me to believe there was not a very long space of time between the two transactions; but I am sure they were not simultaneous. I had nothing to do with the purchase by Mr. Collins of the Curtises' stock."

I am very familiar with the names of the entrymen in these various suits. Only since the commencement of these suits have I discussed with any of these entrymen their entries, with the exception of one of the entrymen by the name of Taylor who was one of the five. I never discussed it with any of the entrymen except when I heard them on the stand. That discussion with the entrymen was about the time, after the subpoenas were served. I am sure I never discussed it with any of them before the suits [1054] were commenced. During

(Testimony of Charles A. Shurtleff.)

the years 1909 and 1910 the office of the Curtis, Collins and Holbrook Company was at my office in the Foxcroft Building, 68 Post Street. I can further say that I have no knowledge of how the finances were arranged between Mr. Holbrook and the Collinses, and these people, the banking I had nothing to do with at all.

Cross-examination.

The Curtis, Collins and Holbrook Company is not registered as a tenant in the Foxcroft Building. They do not pay me any rent at all. Their name does not appear on the directory of the building downstairs, nor is it on the door of my office. The Curtis, Collins and Holbrook Company is purely a holding company. They have no mill. They just have timber. I don't think I gave any certificate for the payment of the Southern Pacific scrip that I rejected. Just how that was done, I don't know, but I don't see why I should give a certificate because the title was not satisfactory. They took it, I know that. If I gave a certificate it was a qualified one because I know I would not say a title was good until the time for appeal was passed. I think that I was to perform the service of passing the title to the scrip land, provided for in the contract. I met Mr. Tuman after I met the Collinses and Curtises. I think the date of the agreement which struck out the word "Trustee" from the original contract will give the date of my first meeting with the Curtises and Collinses. The total holdings of the Company on our assessment-roll are over 72

(Testimony of Charles A. Shurtleff.)

or 73,000 acres. The difference [1055] between 72,000 and the 49,000 acres that we obtained from G. Howard Thompson and this 4,000 additional acres of school land is the amount of land that was acquired by the timber and stone entries—this roughly speaking. I had nothing to do with the negotiations of the sale of Tuman's stock to Mr. Collins. That was all taken care of in the east. All I did was to carry out Mr. Collins' instructions as to the transfer of notes and getting him the stock and seeing that the transfer was properly done. At that time Mr. Tuman was involved and I declined to accept until all persons interested agreed I should take it. I didn't want any insolvency proceedings or anything of that kind. I just closed up the transaction which had already been negotiated. Mr. Collins made his own deal. I never made a deal for him as far as that is concerned. I never had any negotiations, personally, with Mr. Savercool. That was all handled by Mr. Remick and I want to say in that connection that Mr. Remick was instructed by me as regards that $50, to have it thoroughly understood that Mr. Savercool could testify just as he pleased. In other words, if there is any intimation that I was doing anything touching the indirect persuasion of people to testify, I am not guilty of it. I personally instituted the Savercool matter and I personally supervised the other side of it.

"Q. Now, you stated that you advised immediately upon the coming of the secretary of the

(Testimony of Charles A. Shurtleff.)

company the recording of these deeds. Who did you give that advice to?

A. I think that it was soon after; I don't remember just when it was. I never discussed it with T. D. Collins, I am quite certain, because those are matters [1056] that he would brush aside, such details; but I think I took that up with E. S. Collins and told him that the deeds should be recorded; I knew of no reason why they should not be recorded; and he agreed with me, but I don't know that I acted quickly. But as soon as these suits were commenced,—I think there were some off of the record when these suits were commenced, but I had given instructions to record these deeds, and just as soon as the suits were commenced then I insisted that this be hurried along.

Q. Did you wait for him to give you orders?

A. No. He was here on one occasion and I said I thought the deeds ought to be recorded, and he agreed with me; he said he knew of no reason why they should not be recorded, and it was agreed it should be done; but I don't think I commended immediately because I saw no reason for it.

Q. You were waiting for further instructions from him on that?

A. Not particularly; just as soon as I discussed it with him, the placing of the deeds of record, before we got the patents, we had not the record title —the patents to some of them I don't think had issued; but he never at any time in talking with me

(Testimony of Charles A. Shurtleff.)

about the deeds advocated the withholding of them from record.

Q. Didn't he want to talk it over with his father first? A. No, I don't think so.

The MASTER.—Q. Did you have the deeds?

A. The deeds were delivered to me—when Mr. Holbrook went out he turned over everything to me, all of the papers of the Curtis, Collins and Holbrook Company, the papers in the safe deposit box, I had all of them.

Q. Did you await instructions with respect to the recording of the deeds, or did you do it immediately?

A. I talked it over with Mr. Collins and just proceeded at my pleasure. I did not discuss it any further [1057] after I talked it over with him and advised the recording of the deeds.

Mr. PIER.—Q. Did you say you gave somebody instructions to have them recorded?

A. I think I told Mrs. O'Farrell; I know I did. I told her to record the deeds, I will say, furthermore that it would pass out of my mind, and I remember on one occasion I asked her about the recording of those deeds—this, however, she does not recollect—and I was somewhat impatient to be told that they had not been recorded. I did not quicken my haste in recording these deeds until after it had been intimated to me that they were making an investigation; and my attitude in that matter was that so far as I knew they could investigate everything and anything, and I was perfectly willing that they should.

(Testimony of Charles A. Shurtleff.)

So far as I know Mr. Remick was the one who first notified me of an investigation of the titles to these lands by Special Agents. I know absolutely it was since the fire.

Mr. PIER.—Q. When did you become surprised at the fact that these deeds had not been recorded?

A. I can't say, Mr. Pier, that I was ever surprised, because I knew of no reason why they should not be recorded.

Q. I understood you to say that you were surprised that they had not been recorded?

A. No. I said I spoke to Mrs. O'Farrell about it. I asked her about some being recorded, and I thought that they were going on more rapidly than they were. I told her to get the deeds of record. In other words, as far as I am personally concerned, I knew of no reason why the deeds should not be recorded; the withholding of the deeds from the record on my part was not for the purpose of suppressing anything. Of course this is argument, it would have been useless, because if any special agent had interviewed me about the papers, they were right there, I had all of them. [1058] I don't remember how long it was after the fire that E. S. Collins and I had this talk about recording deeds. Any supposition would be merely speculation on my part. It made no impression on me and I gave it no thought until it came to me that there were investigations being made. Whoever notified me I simply instructed to keep me advised, but I never heard anything further. We never attempted to interview any single entryman

(Testimony of Charles A. Shurtleff.)

until after the suits were commenced. I cannot remember when this talk with E. S. Collins about the recording of the deeds took place. I know, at least my recollection is, that the records show that they must have been in my hands some time. It was after the fire that I had my first intimation that there was an investigation of these entries being made. It would probably be as late as 1908 but I know distinctly that just as soon as I heard of these investigations that I did not interview any of the entrymen, and those deeds were placed of record, so that if there was anything to be gained by their recording, the Government could have that information. This discussion as to the recording of the deeds between Mr. Collins and myself, was before these suits were filed. I am certain of that. I would have said it was soon after the fire, but I would not like to put the time. I don't know. None of the deeds introduced in evidence show any of the deeds recorded at the request of Charles A. Shurtleff before the fire. This transaction was made in February and the fire came along in April and I did not give any attention to the matter. I want to say that I was never requested at any time by the Government to give any information concerning these matters until these suits had gone to trial. I was never asked [1059] to give any information until I was subpoeaned as a witness on the first day of the trial.

Wednesday, July 30, 1913.

Recalled.

At the time Mr. Collins bought out Mr. Curtis and

(Testimony of Charles A. Shurtleff.)

Mr. Holbrook, I took over all the papers of the Curtis Collins and Holbrook Company and the deeds. At the time of the fire I saved only a part of the records of the Curtis, Collins and Holbrook Company. I only saved the unrecorded deeds. The recorded deeds at the time of the fire were in the desk of Mrs. O'Farrell, who was then Miss Williams. She had charge of those papers and there were more than could be put in the safe deposit box and they were in the desk.

"Q. How did you determine which were the recorded deeds and the unrecorded deeds?

A. They would show on the face.

Q. That is the notice of the recordation?

A. Yes."

"Q. As to which were the recorded deeds and which were not?

A. Yes. She determined that. You understand, Mr. Pier, I have no recollection of sorting those deeds; that is the way that was done.

Q. Did you make any notation of the recorded and unrecorded deeds at the time you made the examination of the titles for Mr. Collins, at the time he bought out Mr. Holbrook and Mr. Curtis?

A. Yes—so that they would know what was recorded and what was not recorded?

Q. Yes. A. Yes.

Q. When you passed on these titles when Mr. [1060] Collins bought Mr. Holbrook and Mr. Curtis out, what papers did you have to pass on?

(Testimony of Charles A. Shurtleff.)

A. Well, according to my best recollection I had the final receipts—

Q. (Intg.) That would be the Register's receipts?

A. Yes; and the deeds by the entrymen to Mr. Gregory, and the deeds from Mr. Gregory to the Company; those constituted the main papers.

Q. Those were the main papers?

A. Yes, I did not have the land office records.

Q. Had you had anything to do with the timber and stone lands prior to that time that you examined them?

A. I can't recall that I did; I might have but I have no independent recollection.

The MASTER.—Does your question refer to these timber and stone lands or other lands?

Mr. PIER.—Any of the timber lands of the Curtis, Collins and Holbrook Company.

A. I can't recollect that I was brought in contact with these lands independently prior to that time.

Q. Did they ever discuss with you the taking up of timber and stone lands at all?

A. I have no independent recollection of that; they might have done so, but I don't recollect.

Q. You have no recollection then that they ever consulted you at all, that they were taking them up or asked you to pass on the titles or anything of that kind prior to that time?

A. I have no recollection of that. I do not believe that I ever was brought in contact with them, except I might have been asked, for instance, as Mr. Charlie Holbrook testified as to the Rosses, that is the one

(Testimony of Charles A. Shurtleff.)

that is in the East—he testified that he consulted me in [1061] relation to making that title good, whether probate proceedings were necessary or not; I recollect that, but if you mean by your question as to whether he ever consulted me about the field work—

Q. (Intg.) Ever consulted you at all?

A. I have no recollection as to that.

Q. Or asked your legal opinion on any of the aspects, whether it was a good title or not, or anything of that kind?

A. No further than what would be involved in this examination that I made, that I can now recollect.

Q. That was not until the time when Mr. Collins bought out Mr. Holbrook and Mr. Curtis?

A. Yes. I was somewhat familiar—at the time I was requested, at least notified that I might have to examine these titles, I not being familiar with land office laws, I do not even claim it now, I do not attempt land office practice—at that time I did acquaint myself with those laws, but I don't think that I ever discussed them with them to any extent; I know that I never discussed with them, I recollect that, as to the possible frauds of impositions that might or were or could be imposed I never discussed that I know."

I don't know of any particular affidavits or the contents of them or anything of that sort that the Government agents were getting in making their investigation. I am positive I never heard of any alleged acts of fraud or anything until after these suits

(Testimony of Charles A. Shurtleff.)

were commenced. I don't recall when Mr. Remick entered the employ of the Curtis, Collins and Holbrook Company. I tried to ascertain that date. I had nothing to do with the employing of Mr. Remick. Probably he was suggested by Mr. Tuman. His employment would be handled in this way: Tuman would suggest a name and I would probably take it up with E. S. [1062] Collins. In a thing of that kind I could employ and they ratify him but I never did. It was always passed on by E. S. Collins—the matter of salary and what he was to be paid. I am quite certain Tuman fixed the salary. I had nothing to do with it. My testimony the other day might leave the impression that I only talked with five of the entrymen who called at my office. I may have discussed it with all of them but I remember discussing it with one in particular. I also stated then about the recording of these deeds that I knew of no reason why they should not be recorded. I meant by that, personally. Either Mr. Holbrook or Charlie, when I took up the matter of the nonrecording of these deeds, raised the question that they ought not to be recorded until the patents were issued; if recorded before patent it would raise the assessment on the company. They assigned that as a reason to me at some time. The reason of taxation was the only reason that ever came to my knowledge as to why these deeds were kept off the record. Prior to the time that I took it up at the time I went through these papers, it never occurred to me. I had no intimation of any kind, character, or description as to

(Testimony of Charles A. Shurtleff.)

it. In recent years, the assessment of these lands has been raised to something like $10 an acre. I don't know whether it was before or since the recording of these deeds that the assessment was raised. I don't think that the fact that the company owned the lands had anything to do with the raising of the assessment. In regard to my testimony of the other day in which I said "I instituted the Savercool matter, Mr. Pier, and I personally supervised the other side of it." [1063] I don't know just exactly what that meant but what I meant to say was that I knew of the Savercool matter and the payment of the $50. I directed that it should be paid to him for the purpose of reimbursing him for his expenses, and he should be given to understand that he should testify just as he pleased; in other words, if there was any responsibility about it, it is mine, not Mr. Remick's. A few days ago Mr. De Forrest, who has had charge of the law and the facts of the defense of *bona fide* purchaser called to my attention the fact that some of these title papers were not recorded until the statute of limitations had run against the patent. I want to, under oath, here state that that was the first time that was ever brought to my attention; that no one connected with the company ever said a word to me about it, to keep the papers off the record until the statute ran, and they were not kept off the record by me or any one connected with the company with that design. I think that is only due to myself in as much as the papers were in my possession and I had them all the time

(Testimony of Charles A. Shurtleff.)

from the time that the papers were turned over to me; and I want to state furthermore that I have been secretary of the company ever since Mr. Collins purchased the Curtis, Collins and Holbrook interests. I had no design whatever, it never entered my thoughts for one moment, the withholding of these from record until the statute ran. Some time after I took over the papers I discussed with Mr. E. S. Collins the fact that the deeds had not been placed of record. He gave me no specific instructions at that time in regard to it. He never said a word to me about taking it up with his father. We were to record the deeds; it was left to my discretion. I remember this remark; that I asked him if he knew why it was that Mr. Holbrook had kept them off the records, and he said he never knew why Mr. Holbrook had kept them off the records. They had never been recorded, [1064] why it was, he knew nothing about. I thought that conversation took place immediately after I took over the papers. I think—I am satisfied that is wrong because I can distinctly remember I talked with him in the Foxcroft Building and I did not go to the Foxcroft Building until 1908. None of the papers that were turned over to me were recorded before the fire. They were all in the same safe deposit vaults. That is the unrecorded papers. The recorded papers were so voluminous they were in Mrs. O'Farrell's desk. The desk belonged to the company and she occupied it. The recorded papers were the entrymen's deeds to Gregory. I don't remember of any patent or not,

(Testimony of Charles A. Shurtleff.)

but whatever papers were recorded were turned over. I did not direct the recordation of these papers that were held in the safe deposit vault until some time after 1908. I will also state that when we commenced to record the papers I directed Miss Williams, now Mrs. O'Farrell, to do it, and I discovered subsequently that they were not being recorded, and I took her to task in a way, and she has since reminded me of the fact that she could not get them back from the recorder's office, that there was some trouble in the recorder's office at Quincy; the former recorder (not Mr. Clough, the present recorder) was not recording the papers." At the time I was examining these records, at the time Mr. Collins bought out Mr. Curtis and Mr. Holbrook, I noticed that the deeds had not been recorded, and reported the fact to both of the Collinses. Mr. Collins stated to me at the time of this conversation that there seemed to be some reason Mr. Holbrook had for not recording those deeds, and that he did not know what it was. Mr. Collins never favored holding those deeds from record. [1065]

Testimony of Lillian B. O'Farrell, for Defendants.

LILLIAN B. O'FARRELL, called as a witness for the defendants, testified as follows:

I am a stenographer and am in the employ of Charles A. Shurtleff and have been in his employ since November 2d, 1901. I was in the employ of Mr. Shurtleff at the time of the organization of the Curtis, Collins and Holbrook Company. The

(Testimony of Lillian B. O'Farrell.)

minute-book of the Curtis, Collins and Holbrook Company, the account books, the stock ledger and stock journal and stock certificate book were destroyed in the fire which occurred in San Francisco, April 18th, 1906. All of these books were in the office of Mr. Shurtleff at 120 Sutter Street, San Francisco, and the contents of Mr. Shurtleff's office were entirely destroyed. Mr. Shurtleff was in charge of the office of the Curtis, Collins and Holbrook Company at that time. The company had an office across the hall. Mr. Holbrook, Sr., was in charge of the office across the hall; I do not know how long he had charge; I think he continued in charge up to February, 1906. His son, C. H. Holbrook, Jr., was in the office. I did the clerical work, the keeping of the minutes of the corporation. I think Mr. T. D. Collins was elected the first President and D. G. Curtis, the first Secretary and Treasurer. I think Mr. Holbrook was Vice-President. (Trans., p. 1918, 1919.) All of the Directors of the Curtis, Collins and Holbrook Company, from its organization up to the present time, were C. H. Holbrook, Sr., C. H. Holbrook, Jr., J. G. Curtis, D. G. Curtis, T. D. Collins, E. S. Collins, Irving F. Moulton, G. E. Tuman, R. O. Wilson, F. M. Whitworth, Charles A. Shurtleff and L. B. O'Farrell. I never discussed with either T. D. Collins or E. S. Collins or J. G. Curtis, or D. G. Curtis, or C. H. Holbrook or C. H. Holbrook, Jr., or Mr. G. E. Tuman, or either or any of them, the acquiring of these lands, how they were acquired or what was done in their

(Testimony of Lillian B. O'Farrell.)

acquisition. [1066] I am familiar with the entrymen defendants in these cases. I have never discussed with any of them the methods pursued, or what they did in the acquisition or acquiring of these lands. I know J. E. Remick. I have never discussed the acquisition of these lands with him. Prior to the commencement of these suits, I never heard of any talk or rumors concerning any fraud or improper conduct in the acquisition of these lands. The first deed made by G. Howard Thompson, Trustee, to the Curtis, Collins and Holbrook Company was recorded September 18, 1902. It was land in Plumas County; I do not know how much; it was a considerable amount, but not as much as forty thousand acres. (Trans., p. 3145, 3146, 3147.) [1067]

Testimony of Chester L. Hovey, for Defendants.

CHESTER L. HOVEY, called as a witness for the defendants, testified as follows:

I am 63 years of age, and my business is buying and selling timber lands. I have been in the business of buying and selling timber lands in California since along in early eighties. I have bought a great many acres of and. I know about Forest Reserve Scrip, and I had something to do with Forest Reserve Scrip during the years 1901–2. There was a big demand for it in those years. Sometimes we could get, for a period, all that was necessary, and other times it would be scarce. During different periods it varied. I purchased

(Testimony of Chester L. Hovey.)

large and small quantities during those years. There would be times when we would purchase a large block, and times when we could not get it in large blocks, and we would buy it in small quantities—any way we could get it; pick it up wherever we could find it at the best price possible. During those years it was sometimes difficult to get it. I was familiar with the price of lands in the years 1901–2. I know about the lands of the Curtis, Collins and Holbrook Company, both directly and indirectly. My dealings in land were more in what is known as the McCloud River lands, for Mr. Walker, and the only way I could get at the question as to whether the price of $7.50 or $10.00 an acre for the lands of the Curtis, Collins and Holbrook Company during the period of 1901–2 was a fair or unfair price to pay for them, would be to compare the timber. I have been through most of the McCloud River timber and have been through the Curtis, Collins and Holbrook Company timber in Plumas County. When I go through the one tract I come to the conclusion that it is the best tract of timber; when I go through the other tract, I conclude that the latter is the best tract of timber; in other words, they are two good tracts of timber—the best in the country. I spoke of that so as to give an idea as to the value. Now my business, particularly at that time, was [1068] dealing in and selling timber to Mr. Walker, and the average price he was paying at that time was $5.00 and $6.00 an acre for the McCloud River lands.

(Testimony of Irving F. Moulton.)

We tried to hold the price at those figures, and he would not pay much more at that time. (Trans., p. 3104, 3105, 3106). [1069]

Wednesday, July 16, 1913.

Testimony of Irving F. Moulton, for Defendants.

Testimony of IRVING F. MOULTON, called for the defendants.

I am cashier of the Bank of California. In 1901 and 1902 I was assistant cashier. My age is 56 years. I know T. D. Collins, E. S. Collins, J. G. Curtis and D. G. Curtis. I have heard of the Curtis, Collins and Holbrook Company. I was one of the original directors of that company. I hold sufficient stock in the company merely to qualify as a director. I did not attend the meetings of the directors to any great extent. I know that company has acquired certain timber lands. Most of it was acquired by forest reserve or lieu lands. I had nothing personally to do touching the acquisition or purchasing of these lands. I knew nothing of the terms or conditions upon which T. D. Collins or J. G. Curtis or the company were acquiring these lands.

"Q. Now, T. D. Collins and the Curtis, Collins and Holbrook Company bank at your corporation, do they not? A. Yes.

They have since 1901. I never discussed with either E. S. Collins, T. D. Collins, J. G. Curtis or D. G. Curtis, the manner of acquiring lands covered by timber and stone entries. I knew C. H. Hol-

(Testimony of Irving F. Moulton.)

brook, Sr., in his life time and know his son C. H. Holbrook, Jr. I never discussed with either of them the manner of acquiring these lands, that is, what was done in the field. [1070] I never heard anything prior to the commencement of these suits, or any irregularity or fraud or misconduct of any person or individual concerning the acquiring of these lands of the Curtis, Collins and Holbrook Company. I don't know Edward L. Cooksey, John Huntington, J. Warren Stark, Leonard P. Remick, Andrew J. Isenberg, Gertie Tyrrell, Thomas W. Burris, Ella J. Burris, Willard C. Brown, Minerva S. Brown, Charles S. Pierce, Rebecca H. Heppe, Nancy Anderson, Henrietta Tuman, Leroy Benner, James L. Stark, Benjamin F. Wardlow, George A. Hall, Della Hall, Reuben J. Mitchell, Willis Savercool, James Savercool, Jacob S. Aid, Thomas L. Aid, Joseph Ogle, Jacob G. Hensley, Elijah Taylor, Robert Charles Taylor, Charles Moore, Charles H. Butler, George Marion Cooksey, Martha L. Zuschlag, Henry Clay White, Henry E. Johnson, Henry Morley, Mayme Ogle, James W. Rhoades, Plinny P. Hudson, James P. Taylor, Mollie Scott, Fred Scott, Edward Brase, Jack Perini, Herman Gartelman, James G. Baker, Mayme H. Baker, Ella E. Udall, Alex H. Anderson, Ella Spring, Carrie M. Allen, Roy Stark, Lorenzo O. Nissen, John H. Kelley, Arthur W. Savercool, S. G. Eastman, John L. Gray, I. N. Christensen, Robert N. Cameron, Ira T. Johnson, Joseph I. Kelley, Emma L. Kelley, M. J. Self, John Van Ornum, Margaret

(Testimony of Irving F. Moulton.)

Baker, Charles A. Monroe, William J. Gardenhire, George D. Gardenhire, Charles J. Allen, Mabel L. Chamberlain, Della P. Kelley, Frank E. Kruger, Lillian Savercool, John W. Aid, James D. Aid, Henry M. Smith, Roscoe C. Wilcox, Carrie L. Ross, John Zuschlag. I don't know whether I ever met George E. Tuman or not. I know the name. I never discussed with him the acquisition of any lands.

"Q. The fact is, Mr. Moulton, that yon knew nothing about the acquiring of these lands, never heard [1071] anything to the effect that they were procured through fraud or misrepresentation or imposition upon the Government? A. Not at all.

Q. During the fire of 1906 were the records of your bank, so far as the transactions of the Curtis, Collins and Holbrook Company prior to the fire were concerned, were they preserved or destroyed?

A. Well, the chances are they were destroyed; everything outside of the vault was destroyed, and that having been a closed transaction would have been filed away downstairs, and everything was burned down there."

Cross-examination.

I took no active part in the management of the corporation at all. I merely allowed them to use my name as a director so that they could have a full director's board.

I don't recall Charles E. Gregory. I never discussed any of these matters with him.

(Testimony of Irving F. Moulton.)

Thursday, July 31, 1913.

Recalled.

I have searched our records for the accounts of the Curtis, Collins and Holbrook Company. C. H. Holbrook, Sr., C. H. Holbrook, Jr., T. D. Collins and E. S. Collins; have found accounts and prepared copies of portions of these accounts. The bank keeps memoranda or signature cards of the accounts when they are opened, so as to show the signature under which checks are to be drawn, authorized signatures. I have brought these cards with me. We had an account under the name of Collins and Holbrook. It was opened Sept. 15, 1902. [1072]

"Q. This is the card that was taken at the time that that account was opened? A. Yes.

"Q. Did you take that card yourself? A. Yes.

"Q. Do you know who wrote this signature, 'Collins & Holbrook'?

"A. Well, I suppose Mr. Holbrook. To the best of my recollection and belief, he did.

"Q. On the back of the card the address is given as the address where the firm was supposed to have its place of business?

"A. Domiciled there,—San Francisco, the domicile was there.

"Q. And its business is also indicated on the back of the card where that is given? A. Yes.

"Q. On the back of it there is stamped, 'Closed,' and then in pencil figures '4–3–05.' What does that indicate?

(Testimony of Irving F. Moulton.)

"A. I would say that was April 3, 1905.

"Q. What does that indicate?

"A. That the account was closed.

"Q. Closed at that time? A. Yes.

"Mr. PIER.—At this time I would offer this card in evidence, your Honor.

"The MASTER.—You do not want the card to stay here, do you?

"Mr. SHURTLEFF.—Just one moment. I want to object to that; I would like to ask Mr. Moulton a few questions in relation to that card.

"Q. Is there anything on that card that would indicate which Mr. Collins that was, Mr. Moulton?

"A. No.

"Q. Is there anything on that card that would indicate that either E. S. or T. D. Collins knew anything about that account? [1073]

"Mr. PIER.—I think that is a matter of cross-examination.

"Mr. SHURTLEFF.—I will state to counsel now that I propose to object to the introduction of that account, and that card, unless he will prove that Mr. T. D. Collins knew of that account, had knowledge of it. This is simply hearsay evidence against Mr. T. D. Collins.

"The MASTER.—That is true.

"Mr. PIER.—I think this is in the nature of a declaration against interest.

"The MASTER.—Against whom?

"Mr. PIER.—He states that this account of Collins & Holbrook was opened with the Bank of Cali-

fornia. I propose to introduce the whole account in evidence. If Mr. Holbrook did not think either Mr. T. D. Collins or Mr. E. S. Collins were interested in this matter, this would clearly be a declaration against interest, whether they were interested in it or not. It comes in in the nature of a declaration against interest, where a man goes and puts money in a bank and puts it in the name of somebody else, that man, it indicates on the face of it, or somebody else, has got an interest in that account; that man being dead, we are entitled to put it in evidence as a declaration against interest. Mr. E. S. Collins and T. D. Collins are alive. They can make any explanation of this matter that they see fit.

"Mr. SHURTLEFF.—They are not called upon to make any explanation.

"The MASTER.—I do not see how you can prove a partnership between two people in that way. I do not see anything in the nature of a declaration against interest in that statement of Holbrook's.

"Mr. PIER.—If a man deposits in the neighborhood of $75,000 in a bank account in the name of Collins & Holbrook [1074] and Mr. Collins has not any interest, it certainly is a declaration against interest. On that kind of a showing a man could come in and show he deposited money in that name.

"The MASTER.—Yes, but as I understand it—what are your authorized signatures there? Have you made that plain?

"Mr. PIER.—I have the authorized signatures.

That is what I am offering this in evidence for.

"The MASTER.—What are the authorized signatures as shown by that card?

"Mr. PIER.—Collins & Holbrook.

"The MASTER.—By whom?

"Mr. PIER.—It does not give any by whom at all, it is just Collins & Holbrook.

"The MASTER.—Mr. Moulton testified that to the best of his knowledge that was in Mr. Holbrook's handwriting.

"Mr. PIER.—I don't think there is any doubt about it by comparison with the other signatures I have seen of Mr. Holbrook but what it is.

"The MASTER.—There is nothing against interest in Mr. Holbrook's authorizing the signature on an account containing another name, and be the only man to sign for it. He does not lose anything by it.

"Mr. PIER.—It would be a very good piece of evidence, this would be, if Mr. Collins came in and wanted to sue for his portion of the money at the present time. Mr. Collins could come in and say Mr. Holbrook owes him a certain amount of money, has got an interest in that account. Mr. Holbrook says, you have not, you never put in any of that money. There you would have the balance between the two men's statements, with this evidence in Mr. Collins' favor that Mr. Holbrook deposited the money in Mr. Collins' account under the name of Collins & Holbrook. [1075]

"Mr. SHURTLEFF.—You might as well contend, Mr. Pier, that you could go down to the Bank

(Testimony of Irving F. Moulton.)

of California and open an account in the name of Pier & Shurtleff, and then when you have passed away introduce that account as against me to bind me simply because the name Pier & Shurtleff happened to be there.

"Mr. PIER.—I would not deposit one cent of money in the name of Pier & Shurtleff unless Mr. Shurtleff had some interest in the money and I do not believe that anybody else does the same. It is not the way anybody does business, deposit money in the name of somebody else, unless they have some interest in it.

"The MASTER.—You are trying to prove a partnership relation over a fund over which you have sole control and not one on the theory of one giving the other the authority to bind him concerning something which he conceivably has no knowledge.

Mr. PIER.—How can I go in there behind the matter. That is for him to explain, how that happened, if he knows. If he does not know he can come in and say he does not know anything about it.

"Mr. SHURTLEFF.—Mr. Collins is still alive.

"Mr. PIER.—Mr. Collins is still alive.

"Mr. SHURTLEFF.—He knows about it; you can introduce it that way; I think it is hearsay and irrelevant.

"The MASTER.—I will sustain the objection.

WITNESS.—(Continuing.) I think there is no question about it that the signature "Collins & Hol-

(Testimony of Irving F. Moulton.)

brook" is in Mr. Holbrook's handwriting. I don't remember the circumstances, but the account was operated in that way and the money was drawn [1076] out. We know Mr. Holbrook very well. The "S. F." at the top indicates the place, San Francisco, and the "September 15, 1902," indicates the time it was opened. The card is as follows:

"S. F., Sept. 15–02. Authorized signature of Collins and Holbrook in account with the Bank of California, San Francisco, Cal. Collins and Holbrook, *Collins and Holbrook.*"

On the back of the card printed is "Closed"; in pencil, "4–3–05."

"Reopened—Address 120 Sutter Street; business timber lands. Introduced by ———. References ———. Remarks ———."

I have with me the Collins and Holbrook account with the Bank of California. I have had a copy made of this account by the bookkeeper. It was prepared under my direction in the ordinary course of the business in our bank and I believe it is correct.

"Mr. PIER.—Now, I have here the account that Mr. Moulton has furnished me of the Collins and Holbrook account; are you willing, Mr. Shurtleff, to admit this is a correct copy of the account as shown by their books?

"Mr. SHURTLEFF.—Ask Mr. Moulton if he has reason to believe it is correct.

"Mr. PIER.—Q. And you believe it is a correct copy of that account? A. Yes.

(Testimony of Irving F. Moulton.)

"Mr. SHURTLEFF.—Not admitting the relevancy of the account or the admissibility of it, I make no point that you have not produced the books.

"Mr. PIER.—Or the transcriber.

"Mr. SHURTLEFF.—Or the transcriber, without waiving any other objection that I may have.

"Mr. SHURTLEFF.—On behalf of the defendant, Curtis, Collins and Holbrook Company, we object to the introduction [1077] of that account upon the ground that it is hearsay; there is not a scintilla of evidence here of any character or description that Mr. Collins knew anything about it, that he checked against it, or anything of that character. When you say Mr. Collins, who do you mean?

"Mr. PIER.—Mr. T. D. Collins.

"Mr. SHURTLEFF.—I object to it upon the ground that it is purely hearsay. You cannot bind Mr. Collins in that way.

"The MASTER.—The offer is rejected, because there is no proof of any corporation or partnership.

(A copy of this account is hereafter set forth in this transcript on pages 3319-21 in connection with the testimony of Arthur E. Vollmer.)

Mr. PIER.—Q. I show you another account, Mr. Moulton. What is that?

A. That is an account of the Curtis, Collins and Holbrook Company. The date of it is September 17, 1902. Their place of business indicated on the back is 120 Sutter Street, Room 43, engaged in the

(Testimony of Irving F. Moulton.)

lumber business. The authorized signatures are C. H. Holbrook, Vice-president, and D. G. Curtis, Secretary, and it requires two signatures to draw a check on that account. [1078] The signature card of the Curtis, Collins and Holbrook Company is as follows: '"S. F. Sept. 17, 1902. Authorized signature of Curtis, Collins and Holbrook Company in account with the Bank of California, San Francisco, Cal. ———, President. C. H. Holbrook, Vice-President. D. G. Curtis, Secretary. Sigs. Address 120 Sutter Street, Room 43, Business lumber."'

The admission of this was objected to by defendants on the ground that it is immaterial, irrelevant and incompetent and not rebuttal in any way, manner or form, which objection was overruled. The second signature card of the Curtis, Collins and Holbrook Company was identified and received in evidence, and is as follows: "'S. F. 3 Febr. 1906; Authorized signatures of Curtis, Collins and Holbrook Company in account with the Bank of California, San Francisco, Cal. E. S. Collins, Vice-president, Charles A. Shurtleff, Treasurer. Signatures O. K. C. H. Holbrook. Both (2) Account closed June 27, 1910.'"

The "S. F. 3 February, 1906," has reference to the date when the account was opened and the next is the title of the account. Then follows the signatures authorized to operate the account. Later on it states when the account was closed. "Both" means that those are the only signatures given;

(Testimony of Irving F. Moulton.)

usually we have a stamp to indicate two. That means any two of the signatures or both, but I happened to write down both, because those were the only two I had. The endorsement "Signatures O. K. C. H. Holbrook," indicates that he identified the signature as being correct, as being genuine. Very likely we sent it out of town to Mr. Collins. The date "3 February, 1906," is the date when the new signatures were given for the drawing of the checks. The account of the Curtis, Collins and Holbrook Company was prepared under my direction. [1079]

The Master's description of the account is as follows:

"It is a transcript of account of eight pages beginning with September 17, 1902, by Cash deposit on the credit side, ending with the final statement of balance on the credit side on January 5, 1905. The opening item is $10,830.95, and the closing item on the last page is $4,070.78. I think that is a sufficient identification. The account is entitled: 'Curtis, Collins and Holbrook Company, 120 Sutter Street, in account with the Bank of California.'"

Mr. T. D. Collins had an account with the Bank of California for a while beginning January 29, 1906. So far as this card shows—we may have had a dozen cards in the meantime—the account was opened January 29, 1906, or thereabouts. I think I must have sent this card to him in the east for his signature because the writing on the back is evidently written by somebody not in our office. I

(Testimony of Irving F. Moulton.)

don't recognize this writing at all. I don't know whether the account could have been opened earlier than the date of this card or not. The account might have been opened for years or during the period we knew him without having his signature on a card; we might not have had it; might not have asked him for a card to complete our records until this time. I could not tell unless I saw the ledger. The signature card of C. H. Holbrook was handed to us February 25, 1902. The writing on the card is my writing, and this is Mr. Holbrook's signature written on it. He gives as his place of business, 120 Sutter Street. The business is lumber. The account was closed March 22, 1909. The account was opened February 25, 1902. The ledger containing the Holbrook account, covering years from the beginning down to July 1, 1903, was destroyed by the fire. That is, ledger 20, which contains Mr. Holbrook's account, is gone. I cannot state whether that is the first account [1080] Mr. Holbrook opened with us. There might have been a second card or we might not have had a signature when he opened the account. I know T. D. Collins very well. Our bank has handled a great deal of money for T. D. Collins; a good many thousand dollars, starting about December, 1901.

Recalled for defense.

I never knew, either by reason of being present at a directors' meeting or by any conference with the directors, of the appointment of C. H. Holbrook, Sr., to purchase lands for the company. I

(Testimony of Irving F. Moulton.)

never heard of any such resolution or any such talk, or of his having been appointed or authorized to purchase such lands.

Cross-examination.

I never heard of any resolution authorizing the purchase of lands from Mr. Holbrook or from anybody else. I did not attend the directors' meetings regularly. I went up once to a meeting but there was not a quorum. I would have skipped a directors' meeting unless sent for specially. It was hard to get away from business. I acted merely as a dummy director. I acted as a director merely as an accommodation. I don't know to whose credit the $200,000 was deposited in the Bank of California for the purchase of scrip by G. Howard Thompson under the original contract. G. Howard Thompson is dead and was buried yesterday. [1081]

Thursday, July 31, 1913,

Testimony of Arthur E. Vollmer, for Complainant.

Testimony of ARTHUR E. VOLLMER, called for the United States.

I am the bookkeeper in the Bank of California and prepared certain copies of accounts from the books of the Bank of California, the accounts of Collins & Holbrook, Curtis, Collins and Holbrook Company, C. H. Holbrook, D. G. Curtis, and others.

"Q. I will show you the paper here purporting to be the account of Collins & Holbrook, 120 Sutter Street; is that a correct copy of the account as ap-

(Testimony of Arthur E. Vollmer.)

pears in the Bank of California? A. Yes.

The account was opened on the 15th of September, 1902. We have no record of a Collins & Holbrook account with the bank prior to the 15th day of September, 1902.

"Mr. PIER.—I will now offer this.

"Mr. SHURTLEFF.—Let it appear that that is the same one that was offered before.

"Mr. PIER.—Yes.

"Mr. SHURTLEFF.—I make the same objection, that it is hearsay. I object to that, if your Honor please, upon the ground that it is hearsay, irrelevant and immaterial, and incompetent and no evidence offered in any respect to show that T. D. Collins or E. S. Collins or anybody else connected with these cases authorized it, and it does not appear that T. D. Collins was authorized in any way to check against it or that he authorized anyone to check against it, and as I have already stated, it is purely hearsay.

"The MASTER.—The account will be rejected for the reasons indicated by me this morning. [1082]

Plaintiff was allowed an exception to the ruling, and the account was copied into the record, and it is as follows:

"Dr. COLLINS & HOLBROOK, Cr.

120 Sutter St.

Lumber Ppty. In account with the Bank of California, National Association, San Francisco.

1902.			1902.		
Sept. 20.	To Checks	938.72	Sept. 15.	By Deposit	10,000.
Oct. 1.	"	4,911.26	27.	" Cash	20,000.
4.		1,008.	Nov. 17.		10,000.
7.		1,728.	24.		288.
					[1083]
1902.					
Oct. 16.		862.			
27.		8,946.			
28.		3,363.50			
31.		13.33			

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Nov. 5.		1,008.			
12.		6,500.			
21.		7,204.60			
	Balance	3,804.59			
		40,288.00			40,288.00
Dec. 1.		5,860.	Nov. 25.	Balance	3,804.59
15.		1,000.	Dec. 1.		5,760.
16.		2,304.	8.		5,850.
17.		1,880.	26.		18,000.
26.		5,760.			
31.		103.33			
	Balance	16,507.26			
		33,414.59			33,414.59

1903.					
Jany. 3.		717.	Jany. 3.	Balance	16,507.26
17.		676.			
21.		15,052.50			
31.		25.83			
	Balance	35.93			
		16,507.26			
Feby. 28.		23.33	Feby. 7.	Balance	35.93
Mar. 25.		850.	27.		375.
	Balance	12.60	Mar. 25.		475.
		885.93			885.93
Mar. 31.		25.83	Mar. 31.	Balance	12.60
Apl. 30.		327.	Apl. 30.		3,000.
May 15.		2,500.			
	Balance	159.77			
		3,012.60			3,012.60

"Dr. COLLINS & HOLBROOK, Cr.

120 Sutter St.

Lumber Pppty. In account with the Bank of California,
National Association, San Francisco.

1903.				1903.		
Jun. 1.	To Checks	25.83		Jun. 1.	By Balance	159.77
30.		25.				
	Balance	108.94				
		159.77				159.77
July 31.		25.83		July 1.	Balance	108.94
Aug. 31.		25.83				
	Balance	57.28				
		108.94				108.94

Sept. 30.		25.	Sept. 24.	Balance	57.28
Oct. 31.		25.83		Balance	18.55
Nov. 30.		25.			
		75.83			75.83
Dec. 2.	Balance	18.55		Balance	146.56
31.		25.83			
1904.					
Feby. 1.		25.83			
29.		24.47			
Mar. 31.		26.28			
Apl. 30.		25.60			
		146.56			146.56

1904.			1904.		
May 3.	Balance	146.56	July 23.		200.
31.		26.60		Balance	128.67
June 30.		25.85			
Aug. 1.		26.59			
31.		26.08			
Sept. 30.		25.25			
Oct. 31.		26.24			[1085]
Nov. 30.		25.50			
		328.67			328.67

Dec.	2.	Balance	128.67	1905.	
	24.		25.83	Mar. 13.	156.02
	31.		.69	Apl. 1.	.74
1905.					
Jan.	31.		.83		
Feb.	28.		.74		
			156.76		156.76

(Testimony of Arthur E. Vollmer.)

I have examined the accounts of C. H. Holbrook as shown by the books of the Bank of California and have made a copy of the same. I have prepared a correct account as shown by the books, which begins with a balance on July 1, 1903. There might have been an account prior to that time. The books previous to this time were burned up in the fire. This is the only record we have of that account starting in on July 1, 1903. That account was found in Vol. 22 of the ledger, the 2d half of that year. Ledger 20 was destroyed in the fire of 1906, and that ledger contained the C. H. Holbrook account prior to July 1, 1903. I don't know whether we have the cash book of the bank or not during those dates. At the middle of each year we open new books. Our books run for one year, and on the first of July we transfer the balance at that time from the old ledger to the new ledger, and on July 1903, $30,362.31 in Mr. Holbrook's account was brought over as a balance from the old ledger. We haven't anything of ledger 19. This is a correct copy of the C. H. Holbrook [1086] Account from July 1, 1903, to July 1, 1904. I also made a correct copy of the account of C. H. Holbrook from January 2, 1906, to May 29, 1906. I also made a correct copy of the account of T. D. Collins. His account was opened on the 1st day of December, 1904. At that time $16,000 was deposited in that account. That was a new account at that time. Prior to that time we have no record of T. D. Collins in the books of the Bank of California. E. S. Collins opened an account with us December 24, 1901, placing $500 in

(Testimony of Arthur E. Vollmer.)

that account. The largest amount that he ever deposited was $10,005.85. D. G. Curtis opened an account with us on March 7, 1902. The copy of the account runs up to the 1st of July, 1903.

(The account is offered in evidence, pages 3326 to 3327, and shows that during that time Mr. D. G. Curtis did not pass through that account over $10,000, and that the amounts deposited and withdrawn were comparatively small.)

Cross-examination.

Prior to December 1, 1904, Mr. Collins might have had an account which he had closed, and then later opened a new account. When Mr. E. S. Collins opened his account, he gave as his address, 1369 Sixteenth Avenue, Oakland. The word "Cash" December 24, 1901, indicates that the account was opened at that time. We have no records to show how the money in these different accounts was used or where it went or anything of that kind. [1087]

Thursday, November 14, 1912.

Testimony of W. C. Lawrence, for Complainant.

W. C. LAWRENCE, called for the United States.

My name is W. C. Lawrence; I am 28 years of age; residence, Greenville, Cal.; occupation, mail contractor. In 1902 I lived in Greenville.

"Q. Did you know Mr. Ned Remick?

"A. I did; yes."

In 1902 at the suggestion of Mr. Remick I made application to file upon some Government timber land.

(Testimony of W. C. Lawrence.)

Mr. PIER.—"Q. What did Mr. Remick say to you at the time he came to you about taking up the timber land?

A. I can't remember exactly what he said to me, I know it was understood that I was to take up some timber land.

Q. What were you to do with the timber land when you took it up?

A. I was to turn it over to someone else, I don't remember who he said to turn it over to.

MASTER.—Q. You don't know whether he said anyone? A. I could not swear to who he said.

Mr. PIER.—You were to turn it over to somebody; is that correct? A. Yes."

Objected to by Mr. Shurtleff on the ground that it is immaterial, irrelevant and incompetent.

The MASTER. I will overrule the objection. It may be open to a motion to strike out later. [1088]

Mr. PIER.—Q. Was there any statement made at that time as to who would pay the expense of taking up the land?

A. No, I don't believe there was.

Q. Were you to pay for the expenses of taking up the land? A. I did not pay for it.

Mr. PIER.—When you filed on the land did you expect to pay them? A. No, I did not. I did not pay any of the filing fees or pay the Government any money for the land at the time I made final proof.

"Q. After making final proof, did you receive any notice from the Land Office as to whether or

(Testimony of W. C. Lawrence.)

not your proof had been allowed?

A. They said it was fraud, and they would not accept it.

Q. They disallowed the claim, did they?

A. Yes.

Q. And when they disallowed the claim, did they notify you as to whether or not there had been any money deposited to pay for the land?

A. They did not.

The MASTER.—Q. *Is the* witness that Mr. Taylor was talking about yesterday? Was he the man to whom the money was returned?

Mr. PIER.—He is the man to whom the money was returned.

"Q. I will ask you, Mr. Lawrence, whether or not you ever were returned any money on account of making a deposit to pay for this land?

A. I got the money at the Lassen County Bank, I got a notification from the Lassen County Bank that there was $400 in the bank to my credit. [1089]

Q. Did you get that money subsequently?

A. I did, yes, after a time.

MASTER.—Q. How did you get it? Did you go there to the bank?

A. I did not. I just sent to the bank and they sent me the money.

Q. In what shape did they send it to you?

A. It was in three one hundred dollar checks and one I believe was $114.

Q. I suppose those were the drafts on the Bank

(Testimony of W. C. Lawrence.)

of California that were referred to yesterday. Do you remember whether they were drafts on a San Francisco bank, or not?

A. I do not; I don't remember.

Mr. PIER.—Q. Mr. Lawrence, did you ever get any other money from Susanville in that form?

A. I did not.

Q. Do you remember who wrote you the letters sending you the drafts? A. I do not."

I remember that I had quite a little correspondence about sending the money and I believe I told them to send it by postoffice money orders or something of that kind. I remember that I signed a voucher before they would send me the money.

"Q. Before you got this money from Susanville did you have any conversation with anybody about that money? A. I did.

Q. Who was it with?

A. I talked with a good many people about it; I talked with Farrar Brothers; we were in partnership at the time.

Q. Did anybody talk to you about your returning the [1090] money to them? A. They did; yes.

Q. Who was that?

Mr. SHURTLEFF.—I object to your leading this witness. If he has had any conversation with any particular person, ask him about that.

The Master.—I think Mr. Pier was trying to avoid suggesting the name of the person. I do not think it is a leading question.

PIER.—"Q. Did you have a conversation regard-

(Testimony of W. C. Lawrence.)

ing the return of the money?

A. Why, I talked to D. L. Hall, the lawyer, about it, and I talked with the two Farrar Brothers and I talked to several people besides that I don't remember. I used to talk to anyone that I would think would know anything about it. I also talked to a man that said his name was Holbrook, Holbrook's son.

Q. What did this Holbrook say to you about the money?

A. He told me he would have me arrested if I did not return the money.

Q. Did he make any claim for the money at all?

A. He did. He said the money belonged to them. It was not mine."

As near as I can remember he came to me and told me that he was Holbrook's son and that I had $400 and some odd dollars that belonged to them and that he would have had me arrested before coming up there if it was not for the relationship that he and his father and my father had together in business years before, and I remember telling him that if I was arrested that I thought they would be the worst scared of the two. I remember that and that I intended to keep the money. I also told him that if they thought so much of my father [1091] it would please him about as much as anything if they would have me arrested.

Q. Did they ever have you arrested?

A. They did not.

Q. Did they ever bring suit against you for the

(Testimony of W. C. Lawrence.)

money? A. They did not, that I know of.

Mr. SHURTLEFF.—Q. Did you ever return the money? A. I did not.

Mr. PIER.—Q. Did you receive any other money from these people on account of taking up the land?

A. I did.

Q. What did you receive?

A. I got $100 in Quincy before I made proof.

Q. Before you made your proof?

A. Yes, a few minutes before I went to the Land Office.

Q. Who handed you the $100? A. Art Elam.

Q. Who gave you a description of the land you were to file on?

A. Mr. Remick told me where it was.

Q. Did you pay for the publication fees?

A. I did.

Q. With what did you pay for them?

A. He gave me the money to pay for them.

Q. That is who? A. Artie Elam.

Q. Did you pay anybody any location fee for locating you on the land? A. I did not.

Cross-examination.

Mr. SHURTLEFF.—"Q. Mr. Lawrence, when was it that you first had this conversation with Mr. Remick? A. It was at Taylorville, I believe. [1092]

Q. What date? Did you say it was in 1902?

A. I don't know what the date is, no; I could not swear to the date. There was only one thing there, my age there when he first asked me about it, as to

(Testimony of W. C. Lawrence.)

my age, it is 28 there, and instead of that it should be 31.

Q. Who showed you the land?

A. I went to the land myself.

I just had one conversation with Mr. Remick before I went to look at the land. That was in Taylorville and we only talked for a few moments. He just asked me if I wanted to take up some timber land. That is about all.

MASTER.—Q. Did he come to you or did you go to him? A. He came to me.

Q. He came to you. Did he come to your house?

A. No. I met him on the street, the way I remember.

Mr. SHURTLEFF.—Q. Mr. Remick was living at Taylorville at that time? A. Yes.

Q. You were living where?

A. At Greenville. I did not have any particular business in Taylorville on that day. I used to go to Taylorville pretty often, go to any of the towns. Before going to Taylorville I had heard that people were taking up timber land and getting $100 for their timber rights.

"Q. Had you thought before seeing Mr. Remick that you would like to take up a timber right and make $100?

A. No. I had not thought much about it.

"Q. You had not thought much about it. Then what transpired between you and Mr. Remick?

"A. He just asked me if I wanted to take up a

(Testimony of W. C. Lawrence.)

timber right, and I told him yes, that I would just as soon as not. [1093]

Q. He gave you the description?

A. He told me where to go.

Q. Is that all that transpired that day between you and Mr. Remick?

A. I believe that is, as near as I can remember."

I went up to see the land about three or four days after I had a talk with Remick, but I had not seen him in the meantime. After I looked at the land I went to Quincy and made application. I do not remember the contents of the application, but I am sure that I read it before I signed it.

Q. Were the statements contained in that application that you made at that time correct?

A. I think so.

Q. I am talking about the application that you made to locate that timber?

A. Well, if there had been any untrue statements, you mean in regard to the timber or—

Q. (Intg.) Any thing that is untrue in that statement would you have signed it? A. Would I?

Q. Yes.

A. It is pretty hard to tell; I could not tell you.

Q. You would not sign a writing that contained a statement that was false, would you?

A. Well, it would just depend on what you would say was false in it.

Q. What was your purpose in locating the land at all, what did you intend to do with it?

(Testimony of W. C. Lawrence.)

A. Why, I expected to turn the land over; I did not expect to, but that is what I supposed they expected of me.

Q. Was that a matter of supposition?

A. No, it was not. [1094]

Q. They did not ask you to do it at that time?

A. They did not ask me to turn it over, but the supposition with me was they expected me to turn it over.

Q. Well, now, suppose that that application contained a statement that you had not entered into any contract direct or indirect, to sell the land to any other person, would that have been false or correct?

A. That would have been false.

Q. What contract had you made?

A. Well, I had made no contract, no written contract, but it would have been false the way I thought,

Q. Suppose it did transpire that you did make such a statement?

A. It would have been false in this way, that I did not intend to turn the timber over if I got it.

Q. You did not intend to turn it over?

A. No, I did not.

Q. In other words, it would not have been a false oath, but you would have been acting falsely toward the people that you supposed would want the land?

A. That is the way I considered it.

Q. That is, so far as you are concerned you did not intend to turn it over to them unless you wanted to?

A. No, I did not."

(Testimony of W. C. Lawrence.)

I do not believe that I had any promise to Mr. Remick prior to the time that I made my initial application at Quincy.

Q. Had you said anything to Mr. Remick or to any other person living which would justify that person to believe that when you did get the land that you would sell it to them?

A. No, but I understood that I was to turn the land [1095] that was all.

Q. That was an understanding, not from anything that was said, but that came from your own thoughts touching the matter; is that right ?

A. Yes, it was through what I had heard others say.

Q. That they were getting $100 a claim—that they would pay $100 a claim? A. Yes.

Q. So now that was all that you had in mind at the time you went to Quincy? A. That is all.

Q. You say that you received notice—where did you get the $400 with which to pay for this land? You stated it was not your own money when you got it?

A. Why, Art Elam told me the money would be in the Lassen County Bank.

Q. When did you have this talk with Art Elam?

A. At the Plumas House in Quincy, about 20 minutes before I went over to make final proof.

Q. Was that the first time that you had discussed with any person the furnishing of this money with which to pay for this land?

(Testimony of W. C. Lawrence.)

A. That is the first time."

The conversation that I had with Art Elam at that time was very short. He gave me $100 that I was to receive for my timber right and for the money that was to pay for advertising and told me that the money to pay for the timber would be in the Lassen County Bank. That was the first time as near as I can remember that I had any conversation with anybody relative to transferring the land. I don't remember that prior to this conversation anyone came to me and said, "Well, here, Mr. Lawrence, now we want to buy your claim." No one came to me with a proposition of that kind. This conversation [1096] with Elam was a short time prior to making my final proof, and it was for that reason that I testified that I had made a contract, to transfer the land to another.

Q. That is, that testimony was based upon the conversation which you had had with Mr. Elam to which you have just testified?

A. Well, it was the way that I felt about it, all the way through, before that conversation or any other."

I had an impression that the people who were paying the $100 expected to get the land, but I intended to keep the land if I got it.

Q. When did you first decide to sell it? Was it at this conversation that you had with Mr. Elam at the Plumas House?

A. I never had any idea of selling it, at no time if I got it.

(Testimony of W. C. Lawrence.)

Q. What did you take the $100 for then?

A. Just because I could get it, just like that, that is all.

Q. If that land had passed to patent, would you have then deeded it to Mr. Elam or to such person or persons that he might designate? A. No.

Q. What were your reasons for refusing and for not returning this $500, or $400?

A. Just because I did not believe they could get it; that is all. The conversation that I had with young Holbrook, to which I have heretofore testified occurred in Beckwith, Plumas County, and no one was present except Holbrook and myself. [1097]

Redirect Examination.

At the time Remick came to me and discussed the taking up of this land the first time he said I might as well make the $100.

Mr. PIER.—Q. Now, you have testified here on your cross-examination that you got the $100 before you made final proof? A. I did.

Q. Will you state the conversation that took place between you and Mr. Elam which gave rise to your being paid that $100 before making final proof?

A. Well, it is pretty hard to tell, it is so long ago I couldn't remember what he did say, but I know that he gave me the $100 before I made my proof. I could not say what the conversation was, is is too long. [1098]

Testimony of Mrs. Cora Hall, for Complainant.

Mrs. CORA HALL, having been duly sworn, testified on behalf of the plaintiff as follows:

The MASTER.—Q. What is your full name?

A. Cora M. Hall.

Q. And your residence?

A. Susanville, California.

Mr. PIER.—Q. What is your business, Mrs. Hall?

A. I am assistant cashier of the bank.

Q. Of which bank?

A. The Bank of Lassen County.

Q. You have been subpoenaed here to bring certain records of the bank, have you not?

A. I have.

Q. You sent these records that you were subpoenaed to bring, by express down to the office and these are the records, are they?

A. Those are the records, I believe.

Q. Now, Mrs. Hall, I will ask you what this book is. A. That is the certificate of deposit book.

Q. Those are the certificates of deposit?

A. The register.

Q. The register of the certificates of deposit?

A. Yes.

Q. Now, does the register show the certificates of deposit that have been issued by the bank beginning from 1899 down to the present time?

A. No, not to the present time.

Mr. SHURTLEFF.—Q. Is that in your handwriting, Mrs. Hall?

A. Well, there are some of them in my handwrit-

(Testimony of Mrs. Cora Hall.)

ing. Some of the them are the cashier's.

Mr. PIER.—Q. And this covers the certificates of deposit that were issued during the years 1901 and 1902, 1903? A. Yes.

Q. The column to the extreme left is the date of the certificate; is that correct? A. Yes.

Q. And then the number of the certificate comes in the next column? A. Yes, sir; the next column.

Q. And then the person in whose name the certificate was issued comes in the next column?

A. Yes. [1099]

Q. And the amount for which the certificate was issued comes in the next column? A. Yes.

Q. And then you stamp here when the certificate of deposit was paid, in the next column? A. Yes.

Q. Does it state the person who deposits the money; is that the idea? A. Yes.

Q. And then this starts right on again with another line of certificates; is that correct? A. Yes.

Q. This is the regular book in which all certificates of deposit that were issued during that year were kept, the bank's record of them? A. Yes.

Mr. PIER.—Now, if your Honor please, at this time I will take up the examination along certain other lines and ask Mr. White to see if there are any defendants named here who received certificates of deposit.

The MASTER.—That is to say, before you take up the examination on that you want to know what is in it?

Mr. PIER.—Yes, I want to know what is in it first.

(Testimony of Mrs. Cora Hall.)

Q. I will ask you, Mrs. Hall, what this record is?

A. That is the record of drafts drawn.

Q. Now, these drafts are drawn by your bank upon banks outside of Lassen County?

A. Yes, outside of Lassen County?

Q. Now, I notice here at the top of one of the pages drafts drawn on the Bank of California, San Francisco, Cal. That would mean that all of the drafts drawn on that page were drawn on the Bank of California? A. Yes.

Q. Now, are there drafts drawn on any other bank besides the Bank of California?

A. Not in that register.

Mr. SHURTLEFF.—Q. Were these all drafts on the Bank of California? A. Yes.

Mr. PIER.—Q. And this gives the drafts drawn during the years 1901, 1902 and 1903? A. Yes.

Mr. SHURTLEFF.—Whose handwriting is that, Mrs. Hall? [1100]

A. That is the former cashier's.

Q. Did you enter any of them yourself?

A. No.

Mr. PIER.—Q. But they are the regular records in the bank showing the drafts that were drawn on San Francisco during that period? A. Yes.

The MASTER.—Q. What became of the former cashier? A. He died.

Mr. PIER.—Q. You are familiar with his writing, are you not?

A. I think I recognize that as his writing.

(Testimony of Mrs. Cora Hall.)

Q. And this writing contained in this book is his writing, the greater part of it?

A. To the best of my belief.

The MASTER.—Q. What do you mean by that, Mrs. Hall—that is one of the records of the bank and you rely on it as an officer of the bank? A. Yes.

Mr. PIER.—Q. Mrs. Hall, I will ask you what this large book is, marked "Cash 5, Bank of Lassen County"? A. That is our cash-book.

Q. What function does it perform in the bank, what records are kept in this?

A. I think that is the only record they kept at that time, that is the only ledger.

Q. Of the day's business; is that the idea?

A. Yes.

Q. That is, for instance, this will be the business of Tuesday, January 20, 1903, found on page 145; is that correct? A. Yes.

Q. And this shows the money paid out, on the left-hand side—I mean the money that came in on the left-hand side is charged on the sheet; that is correct, is it? A. Yes.

Q. And on the right-hand sheet are the checks that are honored they are noted on the right-hand sheet; is that correct? A. Yes.

Q. Was there any ledger account from which these various entries were posted?

A. None that I know of.

Q. Now, Mrs. Hall, do you have a ledger account at the present time? A. Yes.

(Testimony of Mrs. Cora Hall.)

Q. Do you keep the cash-book at the present time, the same as this cash-book was kept? A. No.

The MASTER.—Now, Mr. Pier, my suggestion would be, unless you [1101] have a better one, that now you have gone thus far in the identification of the books, before you proceed to try to put in evidence of their contents, you give the memorandum that you wish to someone else, for example, the witness, and put on another witness in the meantime.

Mr. SHURTLEFF.—Q. Is this book in your handwriting, Mrs. Hall? A. No.

Mr. PIER.—Q. As a matter of fact, this book was written up before you came into the office?

A. Before I came into the office.

Q. Whose handwriting is this book?

A. It is the former cashier's.

Q. What was his name? A. Mr. Meylert.

The MASTER.—Q. Now deceased? A. Yes.

Q. You know that he was the former cashier of the bank, do you not? A. Yes.

Mr. SHURTLEFF.—What do you expect to prove by this, Mr. Pier?

Mr. PIER.—Just a minute. I find here under December 3, 1902, an entry, "C. H. Holbrook, $4,000." Would this be posted in any other book or card-index or anything of that kind, Mr. Holbrook's account, would this amount be posted anywhere so that we would have in his case any place, the amount of money that was on deposit in Mr. Holbrook's name?

(Testimony of Mrs. Cora Hall.)

A. I don't remember that we had any other record at the time.

Mr. SHURTLEFF.—What is it—a receipt?

Mr. PIER.—Now, I am just going to find out what it is.

Mr. SHURTLEFF.—It does not show there?

Mr. PIER.—What do you mean, by this whole book entry?

Mr. SHURTLEFF.—Yes. Q. Is there anything in your book to show, for instance, or was there not at that time, if you made a deposit of $5,000, how it went out? [1102]

A. It was paid out by check.

Q. For instance, at that time, didn't you keep an account under C. H. Holbrook?

A. We have it there.

Mr. PIER.—Q. Now, Mrs. Hall, I will ask you what these various sheets are?

A. That is from the ledger.

Q. Your bank keeps a loose-leaf ledger, does it?

A. Yes.

Q. I notice here, for instance, the account of L. A. Bunnell, beginning in 1900 and running through 1905. That would be the account of Mr. Bunnell during the time that this record shows with your bank; would that be correct? A. Yes.

Q. And then I notice A. E. Head, with an account during the year 1902; that would show the business that Mr. Head transacted with the bank during that time, the deposits and the amounts that he drew out;

(Testimony of Mrs. Cora Hall.)

is that correct? A. Yes.

Q. And I find an entry here, C. H. Holbrook, beginning with the year 1902 and running down to 1903; that would be Mr. Holbrook's account with the bank during that time; is that correct? A. Yes.

Q. And then you have George E. Tuman's account here; that begins with 1902 and runs through 1903; that is his transactions with the bank; is that correct? A. Yes.

Q. Now, this sheet is headed at the top, "Sheet 1, Bank of Lassen County, Account No. 488"; that would be the first sheet in his account; is that cor rect? A. Yes.

Q. And his account with the bank was 488; that is correct? A. Yes.

Q. Now, the name C. H. Holbrook; that would indicate that it was Mr. Holbrook's account, at the top of the page; is that correct? A. Yes. [1103]

Mr. SHURTLEFF.—Q. Is that in your handwriting, Mrs. Hall? A. No.

Mr. PIER.—Q. Whose handwriting is it in?

A. I think it is Mr. Meylert's.

Q. You think that? A. Yes.

Q. But it comes from the record of the bank, does it? A. Yes.

Q. And it is the record upon which you rely in carrying on your business, is it not? A. Yes.

The MASTER.—Q. Tell me at that time what officers would there be who would be likely to make entries? Was it a large bank with a large staff of

(Testimony of Mrs. Cora Hall.)

clerks, or would the cashier be also the bookkeeper?

A. Well, I think his wife was the bookkeeper—did part of the bookkeeping.

Q. Was there an assistant cashier at that time?

A. No.

Q. What are your duties as assistant cashier?

A. Well, I post the books and draw drafts and so forth.

Mr. PIER.—Q. I will ask you, Mrs. Hall, who is the cashier of the bank at the present time?

A. Mr. Hall, my husband.

Q. What are his initials? A. L. D.

Q. He has been the cashier of the bank for some time, has he? A. I think it is eight years.

Q. Was he in the bank before the former cashier left the bank? A. No.

Mr. SHURTLEFF.—Q. You were not there, either, were you, Mrs. Hall? A. No.

Mr. PIER.—Q. He did not go into the bank as a clerk before he took over the management of the bank; is that correct? [1104] A. Yes.

Q. Did he go into the bank before the former cashier died or did he go in at the death of the former cashier? A. At the death.

Mr. SHURTLEFF.—Q. Before he died, you say?

A. No; after the death of the former cashier.

Mr. PIER.—Q. Now, the column to the extreme left indicates the date upon which the transaction took place; is that correct? A. Yes.

Q. And the next column of figures relates to what

(Testimony of Mrs. Cora Hall.)

book? A. The cash-book.

Q. That would be here, for instance, 20 would indicate the entry in the cash-book, page 20 in the cash-book? A. Yes, on page 20.

Q. The next column indicates the amount of money? A. Withdrawn.

Q. Withdrawn or paid into the bank?

A. Withdrawn.

Q. The next column indicates the amount deposited in the bank? A. Yes.

Q. And the next column would indicate the balance? A. The balance.

Q. And then on the right-hand side that you have —in other words, there is another column just the same as the column on the left-hand side; is that correct? A. Yes.

Q. So that when you get down to the bottom of the page you start on the right-hand side of the page and you make similar entries to those that have been made on the left-hand side of the page? A. Yes.

Mr. PIER.—At this time, your Honor, I wish to introduce in evidence the account of A. E. Head, or C. H. Holbrook and of [1105] G. E. Tuman, as shown by the ledger of the Bank of Lassen County.

Mr. SHURTLEFF.—That is objected to upon the ground it is immaterial, irrelevant and incompetent; as far as Mr. Head is concerned, this is the first time in the case, or any other time.

Mr. PIER.—The first time in the case?

Mr. SHURTLEFF.—Or any other time, so far as

(Testimony of Mrs. Cora Hall.)

I know of. Here is Mr. Bunnell; I never heard of Mr. Bunnell.

Mr. PIER.—I did not offer Mr. Bunnell.

Mr. SHURTLEFF.—A. E. Head, what do you expect to show by that?

Mr. PIER.—I expect to connect that up with some of the entries later on, your Honor. Mr. Holbrook's account there will, I believe, be connected up with a great many.

Mr. SHURTLEFF.—I object to that upon the ground it is immaterial, irrelevant and incompetent, and I will move to have it stricken out unless it is connected with the Curtis, Collins & Holbrook Company in some way. In the first place, it is not the best evidence, either.

The MASTER.—Upon what theory, Mr. Shurtleff?

Mr. SHURTLEFF.—That it is not the best evidence.

The MASTER.—Yes.

Mr. SHURTLEFF.—These represent the receipt of drafts. The drafts themselves would be the best evidence; it represents money paid out on checks, the checks themselves would be the best evidence. However, I do not make that objection.

The MASTER.—I will overrule the objection.

Mr. PIER.—Q. I will ask you, Mrs. Hall, have you any of the old checks which were drawn against the bank under these various accounts of A. E. Head, C. H. Holbrook and George Tuman? [1106]

(Testimony of Mrs. Cora Hall.)

Mr. SHURTLEFF.—Q. In your possession at this time? A. I think not.

The MASTER.—Q. You would not naturally have them, would you? A. No.

Q. They would be returned to the depositor?

A. Yes.

Mr. PIER.—Q. In the natural course of business they would be returned to the parties? A. Yes.

The MASTER.—Q. This ledger account is a posted collection of items from that cash-book there; is that the fact? A. Yes.

The MASTER.—It seems to me I have heard something about the cash-book as the book of original entry, being proper evidence of the facts—

Mr. PIER.—(Intg.) Now, your Honor, I was going to introduce that as soon as we could go through the cash-book and pick out the items that correspond there—I was going to offer the entries in the cash-book in evidence also.

The MASTER.—Are you introducing the cash-book to support the ledger, on the theory that that is a book of original entry or do you make the point that the details of this might be shown in the cash-book?

Mr. PIER.—I want to introduce the cash-book as being the book of original entry, and further, as showing the details of the expenditures, so far as they do that.

The MASTER.—In what shape are you going to offer that evidence?

Mr. PIER.—In this shape, that I will try during

(Testimony of Mrs. Cora Hall.)

the noon recess to check this up, I mean, go through and pick up the items of C. H. Holbrook in the cash-book and then just introduce it as taken from the cash-book on such and such a date.

The MASTER.—I do not know whether the cash-book has been [1107] offered, but when the time comes I will rule on it. What I had in mind was to endeavor to suggest some way the actual introduction of the books as exhibits or at least as permanent exhibits might be avoided. Of course, I do not want to keep them, the Court does not want to keep them, and of course the bank naturally wants the records on file. I think that the best way to do would be for the parties to agree upon a schedule of what they show. That could be read into the record.

Mr. PIER.—I will suggest, if it is agreeable, Mr. Shurtleff, that it might be considered as read into the record and allow the stenographer to copy it.

(The C. H. Holbrook Account from ledger is as follows:)

"Sheet No. 1. Account No. 488.

BANK OF LASSEN COUNTY.

Name—C. H. HOLBROOK.

1902.	Cash-book. Page.	With-drawals.	De-posits.	Balance.
Jul. 28.	398		2600	2600
" 29.	399	50		2550
Aug. 23.	20	75	2000	4475
" 25.	21	425	3100	7150
" 28.	24	850		6300
" 29.	25	850		5450
Sept. 8.	33	5350	5000	5100
" 10.	35	425		4675
" 11.	36	2125		2550
" 12.	37		3500	6050
" 13.	38	1275		4775
" 15.	39	1278		3497
" 17.	41		2690	6187
" 20.	44	3565		2622
" 24.	47	350	7480	9752
				[1108]
" 26.	49	2930		6822
" 30.	52	600		6222
Oct. 2.	54	2750		3472
" 6.	57	500		2972
" 8.	59	856.70		2115.30
" 10.	61		1728	3843.30

1902.	Cash-book. Page.	With-drawals.	De-posits.	Balance.
" 13.	63	250		3593.30
" 15.	65	1740.30		1853
" 16.	66	1325		528
" 29.	77	1800		1272 (red)
" 31.	79		8946	7674
Nov. 6.	83	2789		4885
" 7.	84	4050		835
" 8.	85	434		401
" 13.	89	300		101
" 14.	90		5500	6601
" 15.	91	92		6509
" 18.	93	3850		2659
" 21.	96	3900		1241 (red)
" 25.	99		5184	3943
" 28.	101	60		3883
" 29.	102	2560		1323
Dec. 3.	105	4000	5760	3083
" 13.	114	2070		1013
" 13.				1013
" 19.	119		1880	2893
" 20.	120	2653		240
" 24.	123	500		260 (red)
" 26.	124	100		360 (red)
1903.				
Apr. 2.	207		360	——

"Sheet No. 1. Account No. 516.

BANK OF LASSEN COUNTY.

Name—G. E. TUMAN.

1902.				
Sept. 26.	49		280	280
1903.				
Mar. 31.	205		80	360
Apr. 2.	207	360		——
1903.				
Sept. 19.	354		820	820
" 23.	357		2050	2870
" 24.	358	2870		——"

"Sheet No. 1. Account No. 461.

BANK OF LASSEN COUNTY.

Name—A. E. HEAD.

1902.				
Mar. 28.	302		2400	2400
Apr. 7.	310	2400		——
Aug. 22.	19		200	200
" 28.	24	200		——
Sept. 19.	43		500	500
" 20.	44	283.40		216.60
" 23.	46	435.50		218.90
" 24.	47		350	131.10
Dec. 12.	113	131.10		——"

(Testimony of Mrs. Cora Hall.)

Mr. PIER.—And then in regard to the cash-book, we will go through and under each date tabulate the entry that is made against C. H. Holbrook, under the name of "C. H. Holbrook" and the way it appears in the books here—the Holbrook account and the Tuman account. [1110]

Mr. SHURTLEFF.—That proves nothing, of course, but still you can put it in. That don't prove he got it.

Mr. PIER.—No, but we expect to connect it up later, your Honor.

The MASTER.—I do not know whether you have offered that cash-book or not.

Mr. PIER.—Yes, at this time I will offer in evidence the entries in the cash-book in which it appears that money was deposited to the credit of C. H. Holbrook and also the entries in the book charging the account of Mr. Holbrook with moneys paid out; I will furnish an itemized list of those later, which may be put into the record, as to C. H. Holbrook, A. E. Head and G. E. Tuman.

Mr. SHURTLEFF.—That is objected to upon the ground it is immaterial, irrelevant and incompetent, and not the best evidence. The entries have not been proven to have been made by the person who actually made them.

The MASTER.—I think we all realize that the relevancy of the evidence must depend upon the connecting up of the testimony, but so far as the producing of the actual entrant is concerned as to some of these at least if not this one, the entrant is

(Testimony of Mrs. Cora Hall.)

dead, there has been some identification, not very strong, of the handwriting, but it would seem to me the important thing is the fact of regularity and the reliance upon the record. Take the presidents of large banks of this city, the cashier or managing officer, he is able to say no more than that that is one of the books of original entry. He cannot possibly prove the handwriting and probably you could not prove who the entrant was, it would be some clerk. I say he could not possibly do it. Of course, there are conceivable [1111] instances of it; but the rule is that such books will be admitted after proof that they come from the regular custody and are regular books of account of the institution to which the entry applies. I will admit it, and overrule the objection.

Mr. SHURTLEFF.—That is certain portions; you do not admit it all?

The MASTER.—No, to the extent of the offer.

Mr. SHURTLEFF.—Q. Is the Bank of California your San Francisco correspondent?

A. Yes.

Q. And so far as you know was at the time this transaction took place? A. Yes.

Mr. PIER.—Now, if your Honor please, taking these certificates of deposit, this register of certificates of deposit, Mr. White has gone over this, and I wish to pick out the various entries that I wish to have introduced into evidence at this time, and I realize that they will come in under the objection that they may be irrelevant, immaterial and incom-

(Testimony of Mrs. Cora Hall.)

petent unless connected up further with the transaction, with the defendant, or made material by connecting evidence.

Mr. SHURTLEFF.—Do you claim that these certificates of deposit went to the entrymen?

Mr. PIER.—Yes, they were certificates of deposit that went to the entrymen.

Mr. SHURTLEFF.—Will you give the date?

Mr. PIER.—Yes, I will give that.

The MASTER.—You are entitled to make your objection, Mr. Shurtleff.

Mr. SHURTLEFF.—I make the same objection that I made to the other. [1112]

The MASTER.—The same ruling.

Mr. PIER.—I have here the certificate of deposit, which is dated July 28, 1902, No. 3485, payable to the order of John H. Heppe, amount $425, paid July 29, 1902, deposited same.

Mr. SHURTLEFF.—Heppe has no entry involved here in this case.

Mr. PIER.—No.

Mr. SHURTLEFF.—Those are in the Wheeler case.

Mr. PIER.—Those are in the Wheeler cases.

Mr. SHURTLEFF.—That would be immaterial, irrelevant and incompetent, unless you trace to Curtis, Collins & Holbrook in some way. I will make that objection to that entry at this time.

The MASTER.—I will overrule it *pro forma.*

Q. Let me understand what that transaction means, suppose you explain it, Mrs. Hall; put it in

(Testimony of Mrs. Cora Hall.)

your own language, so that I will understand what the entry is?

A. He came in and purchased a certificate from us that day.

Q. Who did? A. John Heppe.

Q. He deposited that amount of money and took your certificate of deposit on that day? A. Yes.

Q. And the certificate of deposit was paid then?

A. On July 29, 1902.

Q. Does the record indicate to whom it was paid?

A. No.

Q. It might have been paid to the depositor or it might have been paid to his indorsee? A. Yes.

Mr. SHURTLEFF.—Q. As I understand that, Mrs. Hall, that simply means that Mr. Heppe for some reason either presented to your bank that amount of money in cash or the check of some of your depositors and said—instead of taking the money he would like [1113] a certificate of deposit for that amount? A. Yes.

Q. So that for anything that appears in this record, Mr. Heppe might have had this certificate of deposit for a matter of convenience? A. Yes.

The MASTER.—I presume we could assume that this same explanation applies to the other entries?

Mr. SHURTLEFF.—If there are any more that cover the Wheeler cases.

Mr. PIER.—There is Lee A. Summers. I will state that this will come under your Honor's ruling of the other day in relation to the Chamberlin testimony.

The MASTER.—The same ruling as was made in the case of Chamberlin will be considered made.

Mr. PIER.—And excepted to. Then the matter of Wiley T. Forson, dated July 28, 1902. No. 3488, payable to Wiley T. Forsom, amount $425, paid July 29, 1902, deposited by same.

Mr. SHURTLEFF.—That means he had it cashed.

Mr. PIER.—The next entry is of Miss Birdie Holmes.

Mr. SHURTLEFF.—Is that a Wheeler too?

Mr. PIER.—Yes; July 29, 1902, No. 3491. Mrs. Birdie Holmes, 425, paid September 29, 1902. The next one is L. R. Holmes—

Mr. SHURTLEFF.—(Intg.) The same objection goes there. That ought to have no place in this record.

Mr. PIER.—L. R. Holmes, July 29, 1902, No. 3492; L. R. Holmes, 350, July 30, 1902.

The next one is John H. Heppe again, dated July 31, 1902. No. 3494, payable to J. H. Heppe, amount $500, paid July 31, 1902.

The next one is George E. Tuman, dated August 23, 1902, No. 3523, payable to the order of G. E. Tuman, $1,225. It was paid August 29, 1902. The same date, August 23, 1902, No. 3524, [1114] payable to the order of G. E. Tuman, $50. Paid August 29, 1902. August 29, 1902, No. 3528, payable to the order of Mrs. Ellen Baker, $425. It was paid August 30, 1902. August 29, 1902, No. 3529, Miss M. H. Baker, $425, paid August 30, 1902.

August 29, 1902, No. 3530, Miss M. E. Baker, $425, paid August 30, 1902.

September 3, 1902, Gertie Terrill, $425, September 3, 1902.

There are three entries of the Wheelock. I will offer those in evidence subject to the ruling the Chamberlin matter, if your Honor please.

The MASTER.—Very well. The same ruling.

Mr. PIER.—Also entries 3541 and 3542. I will introduce those subject to the same ruling. They relate to the Wheelock case.

Mr. SHURTLEFF.—The same objection.

Mr. PIER.—That is all out of that book. In this book of drafts drawn on Bank of California, I wish to introduce in evidence the entries made here showing four drafts issued in favor of A. H. Taylor; the entries here are, dated August 21, 1903; the number of the draft is 33,256 in favor of A. H. Taylor purchased by the same, amount $100; on the same date, No. 33,257 in favor of A. H. Taylor, purchased by the same, amount $100; the same date, No. 33,258, A. H. Taylor, purchased by the same, amount $100; on the same date, 33,259, in favor of A. H. Taylor, purchased by the same, amount $111.30. The four entries here show drafts on the Bank of California. I introduce them in evidence.

Mr. SHURTLEFF.—We make the same objection.

The MASTER.—The same ruling.

Mr. PIER.—On the cash-book I will put in the specific entries [1115] this afternoon.

Mr. Shurtleff.—No question. [1116]

Testimony of Lewis E. Eddy, for Complainant.

LEWIS E. EDDY, called as a witness for the plaintiff, testified as follows:

I am 51 years old and am an employee of the General Land Office of Washington, D. C. I have been in the service of the General Land Office since December 1, 1902, and am now a law examiner in that office, having held that position since the spring of 1909. In the General Land Office there is a special service division called the Field Service Division, whose business it is to investigate all cases of fraud and irregularity in connection with the taking up of public lands. I have been connected with that division since January or February, 1904. It is my duty to examine and consider reports on land entries from agents in the field. My work includes cases from California. I was in charge of the section of which California is a part in 1904 to 1907, and from March, 1909, to the present time. If any charge of fraud in the taking up of public lands in California had been reported to the General Land Office it should have come to my desk and under my notice. I am familiar with the so-called 97 cases brought in California against the Pennsylvania Lumber Company and Curtis, Collins & Holbrook Company to cancel patents for lands in Plumas and Lassen Counties and have examined the records, which should include all the correspondence in regard thereto. The report of Special Agent Don S. Rathbun which was received at the General Land Office March 26, 1910, is the first re-

(Testimony of Lewis E. Eddy.)

port shown by the records of the General Land Office to have been [1117] received in regard to the following cases: Edward L. Cooksey, Jacob S. Aid, Thomas L. Aid, James D. Baker, John Huntington, Gertie Terrell, Rebecca H. Heppe, Henrietta Tuman, Reuben J. Mitchell, Elijah Taylor, Robert Charles Taylor, and Henry Morley. The files of the General Land Office show no other report of fraud in connection with any of said cases.

Cross-examination.

The reports from which I have testified were procured from various files in the special service division of the General Land Office. They were filed in the jacket which contained all the correspondence in connection with those cases. From the fact that I never saw a report it follows as a settled proposition that there was no such report either in the land office or in the Interior Department. If there had been such report I would be bound to know it. By this I mean that it could not come through the proper channels, without my knowing it. There might have been a report which I did not see, but it would be through some mistake of some employee of the office. I am familiar with the cases above named. I prepared the letter recommending the suits to cancel the patents. [1118]

The following table shows the dates of the respective entries, conveyances by the entrymen to Gregory, recording of the deeds, dates of patents and Gregory's deeds to the Curtis, Collins & Holbrook Co.

Entryman's Name.	Date of Entry.	Deed to Gregory.	Deed Recorded.	Date of Patent.	Gregory's Deed to Co.
Jacob S. Aid	11–21–02	12– 9–02	9–14–04	6– 8–04	5– 2–03
James D. Aid	"	"	11–11–04	9– 9–04	"
John W. Aid	"	"	2–25–11	5– 1–06	"
Thomas L. Aid	"	"	9–14–04	6– 8–04	"
Carrie M. Allen	10– 3–02	10–14–02	3–28–10	9–15–04	12– 2–02
Charles J. Allen	"	"	"	1–19–05	11–10–02
James D. Baker	8–23–02	8–25–02	9–10–04	7–26–04	12– 2–02
Margaret J. Baker	8–29–02	9– 6–02	4–18–10	9–15–04	"
Mayme H. Baker	7–30–02	"	11–12–04	"	"
Edward L. Cooksey	10–16–02	10–25–02	9–10–04	6– 8–04	5– 2–03

Entryman's Name.	Date of Entry.	Deed to Gregory.	Deed Recorded.	Date of Patent.	Gregory's Deed to Co.
Geo. D. Gardenhire	9–22–02	9–27–02	3– 8–11	12–30–04	12– 2–02
Wm. J. Gardenhire	9–20–02	9–26–02	4–18–10	10–28–04	"
John L. Gray	11–29–02	12– 1–02	11–26–09	4–17–05	5– 2–03
Rebecca H. Heppe	9– 8–02	9–16–02	9–14–04	6– 8–04	12– 2–02
John Huntington	10–16–02	10–25–02	9–14–04	"	5– 2–03
Reuben J. Mitchell	11–18–02	11–18–02	"	"	"
Charles J. Monroe	9–20–02	9–22–02	3– 8–11	5– 1–06	12– 2–02
Henry D. Morley	12–24–02	12–19–02	12– 6–04	6–27–04	5– 2–03
M. Jackson Self	2– 6–03	3– 7–03	5–23–05	12–30–04	"
Elijah Taylor	11–29–02	12– 1–02	9–14–04	6– 8–04	"

Entryman's Name.	Date of Entry.	Deed to Gregory.	Deed Recorded.	Date of Patent.	Gregory's Deed to Co.
Robert C. Taylor	"	"	9–23–04	"	"
Gertie Terrell	9– 3–02	9–11–02	"	"	12– 2–02
Henrietta Tuman	9–20–02	1–20–03	9–10–04	"	10–15–04
John Vanorum	1–26–03	2–24–03	10–29–04	9– 9–04	5– 2–03

None of the deeds from Gregory to the Curtis, Collins & Holbrook Company was recorded until October, 1909, when one was put of record, another was recorded in November, 1909, and the remainder in 1910 and 1911. [1119]

None of the deeds from Gregory to the Curtis Collins & Holbrook Company was recorded until October, 1909, when one was put of record, another was recorded in November, 1909, and the remainder in 1910 and 1911. [1119]

The following is a copy of Defendants' Exhibit "B" referred to in the foregoing testimony: [1120]

Defendants' Exhibit "B."

THIS AGREEMENT, made and entered into this 19th day of December, A. D. 1901, by and between Charles H. Holbrook of the City and County of San Francisco, State of California, the party of the first part and T. D. Collins and J. G. Curtis of the Counties of Forest and McKean, State of Pennsylvania, the parties of the second part.

WITNESSETH: That for and in consideration of the sum of One ($1.00) Dollar from each of the parties hereto to the other paid, the receipt of which is by each of said parties hereby acknowledged, and of the stipulations and promises hereinafter contained, the parties hereto do promise and agree as follows:

Said party of the first part promises and agrees to sell to and have the title thereto vested in, the said parties of the second part, their heirs or assigns and as in the manner hereinafter set forth Forty two thousand three hundred and eighty (42380) acres of timber lands situated and being in the Counties of Tehama and Plumas, State of California, for the sum and cost to the said parties of the second part of Seven and 50/100 ($7.50) Dol-

lars, per acre, making the aggregate or total cost of the whole of said land to the said parties of the second part, less Two thousand two hundred and fifty ($2250.00) Dollars, interest, the sum of Three hundred and fifteen thousand six hundred ($315,-600.00) Dollars, which sum and price the said parties of the second part hereby agree to pay for said lands as and in the manner and at the times in this agreement provided.

Said party of the first part agrees to and shall purchase, and properly secure from parties owning the same, Forest Reserve to the amount of Forty two thousand three hundred and eighty (42380) acres and in exchange for the said Forest Reserve obtain the said Forty two thousand three hundred and eighty (42380) acres of timber lands in said Counties of Tehama and Plumas, as per schedule attached, the title to the same to be secured to said parties of the second part, their heirs or assigns in the manner hereinafter set forth.

It is agreed between the parties hereto that the whole of said Forest Reserve shall be properly con-
"Trustee"
veyed and deeded to G. Howard Thompson of San Francisco, hereinafter referred to as "Trustee," [1121] to be held by him in trust for the purposes and upon the terms in this agreement expressed.

Said parties of the second part promise and agree to deposit in and with the Bank of California, of San Francisco, on or before the 31st day of December, 1901, the sum of Two hundred thousand

($200,000.00) Dollars in lawful money of the United States, said sum to be used and applied by said bank in the payment at the rate of not to exceed Five ($5.00) Dollars per acre for all Forest Reserve not exceeding Forty-two thousand three hundred and eighty (42380) acres, which may be deeded or otherwise properly transferred to and in the name of said trustee by parties owning the same, and having good title thereto, (said title to be certified as hereinafter set forth) and who shall accompany their deeds or other instruments of transfer with a written statement to said Bank of California, signed by said party of the first part, that the person or persons deeding the same to said trustee, are entitled to be paid out of said deposit for the lands described in their deed or deeds and with the written certificate of Charles A. Shurtleff, an attorney of San Francisco, that the title to the property described in the deed or deeds, is in the person or persons deeding the same, and that the lands described therein are wholly within the exterior boundaries of a Forest Reserve, and are Forest Reserve lands.

Said parties of the second part agree that when the said Two hundred thousand ($200,000.00) Dollars is exhausted, upon demand, to deposit in said bank the balance necessary to secure said Forty two thousand three hundred and eighty (42380) acres of land at the rate of not to exceed Five ($5.00) Dollars per acre, and to be deeded to said trustee as aforesaid, said balance to be held and expended as and upon the same conditions, as said Two Hun-

dred thousand ($200,000.00) Dollars is held and expended hereunder.

It is agreed by all the parties hereto that neither the said trustee nor the said Bank of California shall be, or are, required to make any examination or inquiry whatsoever, as to the title to any lands deeded to said trustee hereunder, and to be paid for out of said deposit as aforesaid, but shall accept the said certificate of title of the said [1122] Charles A. Shurtleff as final, and that any payments made hereunder by the said bank upon any certificate of the said Charles A. Shurtleff, shall be conclusive, as to title, upon each and all of the parties hereto.

That the said trustee shall, at the written request of the said party of the first part, properly deed to the United States of America, the lands deeded to him as aforesaid, and make application in proper and legal form for specific tracts of land mentioned in the attached schedule in lieu of the lands so deeded. All of said specific tracts of land to be placed and located, and descriptions thereof furnished to the said trustee by the said party of the first part.

That the said trustee, provided he shall have received the notice from the said party of the first part that he has been fully paid, which notice is hereinafter provided for, shall, at the request of the said parties of the second part, either before or after receipt of United States Patents therefor, deed said lieu lands by proper deeds of conveyance, to the said parties of the second part, their heirs

or assigns, or to any persons or corporation they may, in writing, jointly direct.

That all papers in connection with applications for specific tracts of land in lieu of Forest Reserve, shall be prepared by said Charles A. Shurtleff, and that any application made by the said trustee upon papers so prepared by the said Charles A. Shurtleff, shall be conclusive upon each and all of the parties hereto, and that said trustee shall not in any manner or at all, be held responsible therefor, or for any errors therein; the intention of this agreement being that in all cases where the said trustee makes application for said lieu lands upon papers prepared by the said Charles A. Shurtleff, the said trustee not only does not assume any responsibility, but is expressly relieved from all responsibility in the premises.

The said parties of the second part agree when the said party of the first part shall have obtained Forty-two thousand three hundred and eighty (42380) acres of Forest Reserve, and have had the same deeded to the said trustee, as herein provided, or shall have secured the title to Forty-two thousand three hundred and eighty (42380) acres of timber [1123] lands in Plumas and Tehama counties by having Forest Reserve deeded to said trustee, or otherwise procured the title thereto, or sooner if the parties to this agreement consent thereto, to form and organize a Corporation under the laws of the State of California, having for its purposes, among other things, the purchasing and acquiring of said and other timber lands and cut-

ting the timber thereon, and manufacturing it into lumber or other articles of commercial value, and selling the same.

That the said corporation shall have a capital stock of Five hundred thousand ($500,000.00) Dollars, divided into 5000 shares, having a par value of One hundred ($100.00) Dollars each.

That the said parties of the second part shall, upon the completion of the organization of said corporation, deed and convey, or cause to be deeded or conveyed, to said corporation, all of the said Forty-two thousand three hundred and eighty (42380) acres of land in Tehama and Plumas Counties, and receive in full payment therefor Three thousand one hundred and fifty six (3156) shares of the capital stock of the said corporation fully paid up, issued to them and in their names, and the balance of said stock being One thousand eight hundred and forty four (1844) shares shall remain in the treasury of the corporation and shall not be sold for less than par.

That the said party of the first part shall be one of the original incorporators of said corporation, and shall serve as, and be, a director so long as he owns any stock therein.

That the By-laws and purposes of said corporation shall be mutually agreed upon by and between the parties hereto.

That when said Forty two thousand three hundred and eighty (42380) acres of Forest Reserve shall have been deeded to the said trustee as hereinbefore provided, or the title to said Forty two

thousand three hundred and eighty (42380) acres secured to said parties of the second part by acquiring Forest Reserve or through any other method or source, the said parties of the second part shall pay to the said party of the first part the balance of the said purchase price of said lands, to wit: the sum of One hundred and fifteen thousand six hundred ($115,600.00) Dollars, such payment to be made in the manner following, [1124] to wit: They shall deliver to the said party of the first part properly endorsed and fully paid up and free from assessments, and all other liens whatsoever, 789 shares of the capital stock of the said corporation to be organized as aforesaid; from Five thousand ($5000.00) Dollars to Ten thousand ($10000.00) in cash, and the balance in notes of the said parties of the second part, payable six months from date, with interest thereon at the rate of six (6%) per cent per annum until paid, in full payment of said balance, and said party of the first part shall give said second parties a notice to said trustee that said balance has been paid with an order to convey said lands and titles to said second parties.

It is expressly understood and agreed that the said trustee shall not deed or convey to the said parties of the second part or either of them, or their or either of their heirs, executors, administrators or assigns, any part or portion of the said Forest Reserve, or lands which he, said trustee, may acquire and hold in lieu of said Forest Reserve, or under this agreement, until the said party of the first part shall, in writing, notify said trustee that

he has been fully paid the sum of One hundred and fifteen thousand six hundred ($115,600.00) Dollars.

It is further agreed that if said parties of the second part shall advance, to be applied toward the purchase of said lands, any amount in excess of said Two hundred thousand ($200,000.00) Dollars, then and in that event the principal sum or sums of said promissory notes which said parties of the second part are to execute and deliver to said party of the first part, as aforesaid, shall be reduced in an amount equal to such excess.

It is agreed that if for any reason said party of the first part is unable to secure the title to the whole of the said Forty two thousand three hundred and eighty (42380) acres of timber lands in Plumas and Tehama Counties, through and by the use and application of Forest Reserve, he may secure such title through any other legal means or source; it being understood, however, that in no event shall he or the persons deeding the same be paid for the lands thus acquired, until the title thereto is certified to be good by the said Charles A. Shurtleff, and deeded to said trustee, and that when so certified, the said bank [1125] shall pay from said deposit for said lands, it being understood and agreed that all the provisions and stipulations of this agreement as to payment by said Bank of California for, and covering, the purchase of Forest Reserve, shall also apply to the payment for, and purchase of, lands the title to which is secured other than by the application or use of Forest Reserve.

It is agreed by and between the parties hereto

that should it be found practicable, a Corporation shall be organized for the purpose of acquiring, building, owning and conducting a railroad to and from the lands acquired under this agreement, and that the said party of the first part shall have and has the right and option to subscribe for and purchase the same proportion of the capital stock of said railroad corporation as, at the time of its organization, the stock he owns or is entitled to receive, in the said corporation to be organized for the purpose of buying and selling timber lands, manufacturing lumber, etc., bears to the subscribed capital stock thereof, and that said party of the first part shall be a director in said corporation so long as he owns any stock therein.

Should the purchase of all of said Forty-two thousand three hundred and eighty (42380) acres of Forest Reserve from the owners, not exhaust all of said Two Hundred thousand ($200,000.00) Dollars so deposited in the Bank of California by second parties for that purpose as aforesaid, then when the owners are paid for all of said Forty-two thousand three hundred and eighty (42380) acres of Forest Reserve lands out of said fund, the balance of such fund shall belong to said party of the first part.

This writing is executed in triplicate and shall bind the heirs, executors, administrators and assigns of the parties hereto. [1126]

IN WITNESS WHEREOF, the said parties hereto have hereunto set their hands and seals the

day and year first herein written.

CHARLES H. HOLBROOK. (Seal)
T. D. COLLINS. (Seal)
J. G. CURTIS. (Seal)

Word "Trustee" above last line on first page of this contract interlined before signing.

Witness:

D. G. CURTIS.

State of Pennsylvania,
County of Warren,—ss.

Be it remembered that on this 19 day of December, A. D. 1901, before me, the subscriber, a Justice of the Peace in and for said County, personally appeared Charles H. Holbrook, the grantor, mentioned in the foregoing contract and agreement, and acknowledged that he executed and delivered the foregoing indenture of contract and agreement and desired the same recorded.

Witness my hand and official seal.

[Seal] H. S. PERRY, J. P.

State of Pennsylvania,
County of Warren,—ss.

Be it remembered that on this 19th day of December, A. D. 1901, before me, the subscriber, a Justice of the Peace in and for said County, personally appeared T. D. Collins, one of the covenantors, mentioned in the foregoing contract and agreement, and acknowledged that he executed and delivered the foregoing indenture of contract and agreement and desired the same recorded.

Witness my hand and official seal.

[Seal] H. S. PERRY, J. P.

State of Pennsylvania,
County of Warren,—ss.

Be it remembered that on this 19th day of December, A. D. 1901, before me, the subscriber, a Justice of the Peace in and for said County, personally appeared J. G. Curtis, one of the covenantors, mentioned in the foregoing contract and agreement, and acknowledged that he executed and delivered the foregoing indenture of contract and agreement and desired the same recorded.

Witness my hand and official seal.

[Seal] H. S. PERRY, J. P. [1127]

I, the undersigned, Charles A. Shurtleff, named as attorney in the foregoing agreement, hereby consent to act as such attorney in the interest of both the first and second parties hereto and hereby agree to carry out the duties of such attorney as and in the manner in said agreement set forth.

CHARLES A. SHURTLEFF.

Ack. 12/24/01 before Mason, Notary for S. F. [1128]

I, the undersigned, G. Howard Thompson, named as trustee in the foregoing agreement, hereby consent to act as such trustee, and hereby agree to carry out the duties of such trustee as and in the manner in said agreement set forth.

G. HOWARD THOMPSON,

Ack. 12/24/01 before Mason, Notary for S. F. [1129]

SCHEDULE OF TIMBER LANDS REFERRED TO AND ATTACHED TO AND FORMING A PART OF THE FOREGOING AGREEMENT.

TOWNSHIP 27 NORTH, RANGE 4 EAST, MOUNT DIABLO MERIDIAN.

Section 1, N. 2 and SW. 4 of NW. 4.
Section 2, N. ½ of SW. 4; NW. 4 of SE. 4.
Section 3, NE. 4 of NW. 4; and S. 2.
Section 4, S. 2 of SE. 4; SE. 4 of SW. 4.
Section 9. SE. 4 of NE. 4.
Section 10, NW. 4 and N. 2 of NE. 4.

TOWNSHIP 27 NORTH, RANGE 6 EAST, M. D. M.

Section 1, NE. 4; E. 2 of NW. 4; NW. 4 of NW. 4; N. 2 of SE. 4; SW. 4 of SW. 4; NE. 4 of SW. 4.
Section 12, SE. 4; S. 2 of NE. 4; SE. 4 of NW. 4; NW. 4 of NW. 4; and E. 2 of SW. 4.
Section13, NE. 4; N. 2 of NW. 4; SE. 4 of NW. 4; N. 2 of SE. 4.

TOWNSHIP 27 NORTH, RANGE 7 EAST, M. D. M.

Section 4, SW. 4; SW. 4 of NW. 4; and W. 2 of SE. 4.
Section 5, All of.
Section 6, NE. 4; N. 2 of NW. 4; S. 2 of SE. 4 and NE. 4 of SE. 4; SE. 4 of NW. 4.
Section 7, NE. 4; S. 2 of SE. 4; SW. 4 of NW. 4. 4.
Section 8, All of.
Section 9, NW. 4 of NW. 4.

Section 17, N. 2 of N. 2.
Section 18, NW. 4 of NW. 4; SE. 4 of NW. 4 and W. 2 of NE. 4.

TOWNSHIP 28 NORTH, RANGE 4 EAST, M. D. M.

Section 1, S. 2 and S. 2 of NW. 4.
Section 2, All of excepting NE. 4 of SE. 4.
Section 3, All of.
Section 4, SE. 4 and S. 2 of SW. 4.
Section 8, SE. 4 of SE. 4 and SE. 4 of NE. 4.
Section 9, All of. [1130]
Section 10, All of.
Section 11, N. 2 of SW. 4; S. 2 of SW. 4; NW. 4; S. 2 of NE. 4; NW. 4 of NE. 4; N. 2 of SE. 4 and SE. 4 of SE. 4.
Section 12, All of.
Section 13, All of.
Section 14, All of.
Section 15, N. 2 of SW. 4; N. 2 and SE. 4.
Section 17, NE. 4 of NE. 4 and SE. 4 of SE. 4.
Section 20, E. 2 of E. 2.
Section 21, W. 2 and SE. 4; S. 2 of NE. 4.
Section 22, S. 2, NE. 4 and S. 2 of NW. 4.
Section 23, N. 2, SE. 4, N. 2 of SW. 4, SW. 4 of SW. 4.
Section 24, W. 2 of SE. 4, NE. 4 of SE. 4, N. 2 of NE. 4, NW. 4, E. 2 of SW. 4, NW. 4 of SW. 4.
Section 25, N. 2 of SE. 4, S. 2 of SW. 4, NE. 4 of SW. 4, S. 2 of NW. 4, NW. 4 of NW. 4.
Section 26, N. 2 of NW. 4, SE. 4 of NW. 4, NW. 4 of SE. 4, NE. 4 of NE. 4, S. 2 of NE. 4.

Section 27, N. 2, E. 2 of SE. 4, NW. 4 of SE. 4, SE. 4, of SW. 4.

Section 28, NE. 4.

Section 34, N. 2 of NE. 4, SW. 4 of NW. 4, E. 2 of NW. 4, E. 2 of SW. 4, E. 2 of SE. 4, NW. 4 of SE. 4, SW. 4 of NE. 4.

Section 35, NE. 4 of SE. 4, E. 2 of NE. 4, NE. 4 of SW. 4, E. 2 of NW. 4, NW. 4 of NW. 4, and SW. 4 of NW. 4.

TOWNSHIP 28 NORTH, RANGE 5 EAST, M D. M.

Section 1, E. 2 of NE. 4; E. 2 of SE. 4.

Section 2, S. 2 of NW. 4.

Section 3, SE. 4 of SE. 4; N. 2 of NW. 4; SW. 4 of N. W. 4; NW. 4 of SW. 4;

Section 4, N. 2 of NE. 4; SE. 4 of NE. 4.

Section 6, S. 2.

Section 7, All of.

Section 8, NE. 4 of NE. 4; SE. 4 of SE. 4; N. 2 of SW. 4; SE. 4 of SW. 4; N. 2 of NW. 4; SW. 4 of NW. 4; SW. 4 of NE. 4;

Section 9, S. 2; NW. 4; S. 2 of NE. 4 and NW. 4 of NE. 4.

Section 10, SE. 4; E. 2 of NE. 4. NW. 4 of NW. 4; SW. 4 of NW. 4; NE. 4 of NW. 4.

Section 11, N. 2; SW. 4 and N. 2 of SE. 4. [1131]

Section 12, E. 2 of NE. 4 and SE. 4. SW. 4 of NW. 4.

Section 13, NE. 4; N. 2 of SE. 4; SW. 4 of SE. 4; E. 2 of SW. 4; NW. 4 of SW. 4; S. 2 of NW. 4; NE. 4 of NW. 4;

Section 14, All of.
Section 15, E. 2; SW. 4 and S. 2 of NW. 4.
Section 17, All of.
Section 18, All of.
Section 19, N. 2; S. 2 of SW. 4; NW. 4 of SW. 4.
Section 20, N. 2; SE. 4; S. 2 of SW. 4 and NE. 4 of SW. 4.
Section 21, NW. 4 of SW. 4; SW. 4 of NW. 4,
Section 22, N. 2 of NW. 4; SE. 4 of NW. 4; NE. 4; E. 2 of SE. 4; NW. 4 of SE. 4.
Section 23, All of.
Section 24, SW. 4; SW. 4 of SE. 4; SE. 4 of NW. 4.
Section 25, N. 2 of N. 2; S. 2 of SE. 4.
Section 26, N. 2 of N. 2; SW. 4 of SE. 4; S. 2 of SW. 4; NW. 4 of SW. 4.
Section 27, W. 2 of W. 2; SE. 4 of NW. 4; NE. 4 of SW. 4; E. 2 of SE. 4; SW. 4 of SE. 4.
Section 28, NE. 4; E. 2 of NW. 4; SW. 4 of NW. 4; N. 2 of SW. 4; NW. 4 of SE. 4 and SE. 4 of SE. 4.
Section 29, E. 2; SW. 4; E. 2 of NW. 4.
Section 30, NE. 4 of SE. 4; W. 2 of NW. 4; SE. 4 of NW. 4.
Section 31, SW. 4, W. 2 of SE. 4, NE. 4 of SE. 4, SW. 4 of NE. 4, W. 2 of NW. 4, SE. 4 of NW. 4.
Section 32, SE. 4, E. 2 of NE. 4, SW. 4 of NE. 4.
Section 33, W. 2 of W. 2.
Section 36, NE. 4.

TOWNSHIP 28 NORTH, RANGE 6 EAST, M. D. M.

Section 2, S. 2 of SW. 4.
Section 11, W. 2 of NE. 4; SE. 4 of NE. 4.
Section 13, W. 2 of SE. 4.
Section 14, S. 2 of SE. 4; SW. 4 of NE. 4.
Section 16, SW. 4.
Section 17, W. 2 of SE. 4; E. 2 of SW. 4.
Section 18, E. 2 of NE. 4; SW. 4 of NE. 4; N. 2 of SW. 4; NW. 4 of SE. 4; S. 2 of NW. 4 and SW. 4 of NE. 4.
Section 19, S. 2 of SE. 4; E. 2 of NW. 4. [1132]
Section 20, N. 2 of NE. 4; NE. 4 of NW. 4; S. 2 of SE. 4.
Section 21, S. 2 of SW. 4; NE. 4 of S. W. 4; E. 2 of SE. 4; NW. 4 of SW. 4; S. 2 of NE. 4; SE. 4 of NW. 4; N. 2 of NE. 4;
Section 22, N. 2 of SE. 4; S. 2 of NE. 4; NE. 4 of SW. 4; SE. 4 of NW. 4; S. 2 of SW. 4;
Section 23, W. 2 of NW. 4; NW. 4 of SW. 4.
Section 24, E. 2 of SE. 4; NW. 4 of NE. 4; SE. 4 of NE. 4; NW. 4 of NW. 4.
Section 25, All of.
Section 26, W. 2 of SW. 4; NE. 4 of SW. 4; NW. 4 of SE. 4; SE. 4 of NE. 4; SW. 4 of NE. 4.
Section 27, E. 2 of NE. 4; SW. 4 of NE. 4; N. 2 of SW. 4; N. 2 of SE. 4; and SE. 4 of SE. 4.
Section 28, W. 2 of NW. 4; SE. 4 of NW. 4; NE. 4 of NW. 4.

Section 29, N. 2 of SE. 4; NE. 4 of SW. 4;
Section 30, W. 2 of SW. 4; NW. 4 of NW. 4; S. 2 of NE. 4.
Section 31, SW. 4 of NW. 4.
Section 34, E. 2 of NE. 4.
Section 35, NW. 4; NE. 4 of SW. 4.

TOWNSHIP 28 NORTH, RANGE 7 EAST, M. D. M.

Section 19, S. 2 of SW. 4; NW. 4 of SW. 4.
Section 29, SW. 4; W. 2 of NW. 4.
Sections 30 and 31, All of.
Section 32, SW. 4, S. 2 of NW. 4; NW. 4 of NW. 4 and SW. 4 of SE. 4.

TOWNSHIP 29 NORTH, RANGE 4 EAST, M. D. M.

Section 21, E. 2 of SE. 4; SE. 4 of NE. 4.
Section 22, SW. 4; S. 2 of NW. 4; S. 2 of NE. 4; N. 2 of SE. 4; SW. 4 of SE. 4.
Section 25, S. 2 of SW. 4; NW. 4 of SW. 4.
Section 26, S. 2.
Section 27, SW. 4 of SE. 4; W. 2 of NW. 4; NE. 4 of SW. 4; SE. 4 of NW. 4.
Section 28, NE. 4.
Section 34, SE. 4 of SE. 4.
Section 35, NE. 4; N. 2 of NW. 4; SE. 4 of NW. 4; N. 2 of SE. 4; SE. 4 of SE. 4; S. 2 of SW. 4; NE. 4 of SW. 4.

TOWNSHIP 29 NORTH, RANGE 5 EAST, M. D. M.

Section 23, S. 2 of S. 2. [1133]
Section 25, NW. 4; NW. 4 of NE. 4; W. 2 of SW. 4; SE. 4 of SW. 4; and SW. 4 of SE. 4.

Section 26, All of.
Section 27, E. 2.
Section 24, S. 2 of SW. 4.
Section 29, N. 2 of SW. 4; S. 2 of NW. 4; SW. 4 of NE. 4; S. 2 of SE. 4.
Section 30, N. 2 of SE. 4; S. 2 of NE. 4; SE. 4 of NW. 4, NE. 4 of SW. 4.
Section 31, NE. 4.
Section 32, N. 2; E. 2 of SE. 4; NW. 4 of SE. 4; N. 2 of SW. 4.
Section 33, W. 2; SE. 4; and S. 2 of NE. 4.
Section 34, E. 2 of NE. 4; NE. 4 of SE. 4; SW. 4 of SE. 4; SW. 4; and SW. 4 of NW. 4.
Section 35, N. 2 of S. 2.

TOWNSHIP 29 NORTH, RANGE 6 EAST, M. D. M.

Section 28, S. 2 of SW. ; NW. 4 of SW. 4;
Section 29, S. 2; S. 2 of NW. 4.
Section 30, S. 2 of SW. 4; NW. 4 of SW. 4; SW. 4 of SE. 4; NE. 4 of SE. 4; S. 2 of N. E. 4.
Section 31, All of.
Section 32, SW. 4; SW. 4 of NW. 4; SW. 4 of SE. 4; NE. 4 of SE. 4; N. 2 of NE. 4.
Section 33, S. 2 of SE. 4; SW. 4; E. 2 of NW. 4 and NW. 4 of NW. 4. [1134]

SUMMARY.

T.	R.	Sec.	Acres.	T.	R.	Sec.	Acres.	T.	R.	Sec.	Acres.
27	4	1	200	28	5	3	200	28	6	23	120
		2	120			4	120			24	200
		3	120			6	320			25	640
		3	320			7	640			26	200
		4	120			8	40			26	80
		9	40			8	40			27	120
		10	240			8	280			27	200
	6	1	440			9	600			28	120
		12	400			10	240			28	40
		13	320			10	80			29	80
	7	4	280			10	40			29	40
		5	640			11	600			30	80
		6	400			12	240			30	120

T.	R.	Sec.	Acres.
		7	160
		7	80
		7	40
		8	640
		9	40
		17	160
		18	280
28	4	1	240
		2	600
		3	640
		4	200
		8	40
		8	40
		9	640
		12	40
		13	520
		14	640
		15	560
		17	640
		18	640
		19	320
		19	120
		20	600
		21	80
		22	400
		23	640
		24	240
		25	160
		31	40
		34	80
		35	200
	7	19	120
		29	200
		30	640
		31	640
		32	320
29	4	21	120
		22	440
		25	120
		26	320
		27	40
		27	80

T.	R.	Sec.	Acres.	T.	R.	Sec.	Acres.	T.	R.	Sec.	Acres.
		10	640			25	80			27	80
		11	560			26	320			28	160
		12	640			27	240			34	40
		13	640			27	120			35	520
		14	640			28	480		5	23	160
		15	80			29	560			24	80
		15	480			30	160			25	360
		17	40			31	480			26	640
		20	80			32	280			27	320
		21	320			33	160			28	200
		22	320			36	160			11	80
		22	240		6	2	80			30	240
		23	600			11	120			31	160
		24	480			13	80			32	520

T.	R.	Sec.	Acres.	T.	R.	Sec.	Acres.	T.	R.	Sec.	Acres.
		25	320			14	120			33	560
		26	160			16	160			34	360
		26	80			17	160			35	480
		27	400						6	28	120
		27	80			18	360			29	400
		28	160			19	80			31	640
		34	440			19	80			30	240
		35	120			20	120			32	360
		35	160			21	360			33	80
		35	40			21	80			33	280
	5	1	160			22	240				
		2	480			22	80				

[1135]

Stipulation in Re Statement of Evidence.

It is hereby stipulated and agreed by and between the parties to the above-entitled suits, through their respective solicitors, that the inclusion in the foregoing statement of evidence of testimony of witnesses reproduced in the exact words of the witnesses by questions and answers is in accordance with the desires of the parties, and that the foregoing statement of the evidence is full, true and complete and may be approved as such by the Court.

S. W. WILLIAMS,
Special Assistant to the Attorney General,
Solicitor for the Plaintiff and Appellant,
CHARLES A. SHURTLEFF, and
J. G. DE FOREST,
Solicitors for the Defendants.

Order Approving Statement of Evidence.

It appearing to the satisfaction of the Court that the parties were unable to agree as to the reduction to narrative form of so much of the testimony in the above-entitled causes as is set out in the foregoing statement of evidence by question and answer therein, and it appearing to the Court that the evidence in said causes has been reduced and stated in narrative form in the said reduction of evidence other than the evidence set out by question and answer, and it also appearing to the satisfaction of the Court that the foregoing statement of the evidence is full, true and complete, the same is hereby approved.

Dated this July 20, 1920.

WM. H. SAWTELLE,
District Judge.

[Endorsed]: Filed July 20, 1920. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [1136]

In the Southern Division of the United States District Court for the Northern District of California, Second Division.

No. 15,077.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

EDWARD L. COOKSEY et al.,
Defendants.

Petition for Appeal.

To the Honorable WILLIAM C. VAN FLEET, District Judge, etc.

The above-named plaintiff feeling itself aggrieved by the decree made and entered in this cause on the 13th day of April, 1917, does hereby appeal from the said decree to the Circuit Court of Appeals for the Ninth Circuit for the reasons specified in the Assignment of Errors, which is filed herewith, and it prays that its appeal be allowed, and that citation issue as provided by law, and that a transcript of the record, proceedings and papers upon which said decree was based, duly authenticated, may be sent to the United States Circuit

Court of Appeals for the Ninth Circuit, sitting at San Francisco in the Southern Division of the Northern District of California.

Dated October 11, 1917.

JNO. W. PRESTON,
United States Attorney,
ED. F. JARED,
Assistant United States Attorney,
Solicitors for Plaintiff.

[Endorsed]: Filed Oct. 11, 1917. Walter B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [1137]

In the District Court of the United States in and for the Northern District of California, Second Division.

IN EQUITY—No. 15,077.

UNITED STATES OF AMERICA,
Complainant,

vs.

EDWARD L. COOKSEY et al.,
Defendants.

Assignments of Error.

Now comes the plaintiff in the above-entitled cause, by John W. Preston, United States Attorney for the Northern District of California, and Ed. F. Jared, Assistant United States Attorney for the Northern District of California, and says that the decree entered in the above-entitled cause on the 13th day of April, 1917, is erroneous, unjust and

prejudicial to the plaintiff in the following particulars:

I.

The Court erred in failing and refusing to enter a decree cancelling the patent issued on the 8th day of June, 1904, and declaring the land described in the bill of complaint to be public land of the United States of America, and that the defendants and all persons claiming under them are without any right, title, interest, claim or right of possession in and to said land.

II.

The said Court erred in making and entering of record a decree dismissing the bill of complaint herein. [1138]

III.

The said Court erred in overruling the following exceptions taken by the plaintiff to the Master's report, to wit:

8. Complainant excepts to the finding and report of the Master (page 70) "that the corporation was to acquire title to the lands through Curtis and Collins."

9. Complainant excepts to the finding and report of the Master (page 70) that "in effect it was a transaction of purchase and sale between Holbrook as vendor and Curtis and Collins as vendee."

10. Complainant excepts to the finding and report of the Master (page 70) that "in this transaction the parties have been seen to be dealing at arm's-length."

11 Complainant excepts to the finding and re-

port of the Master (page 70) in that said report fails to take cognizance of the fact testified to by T. D. Collins (page 2023) that he insisted that Charles H. Holbrook take stock in said corporation and have an interest in said business as he wanted him to be associated with the business so that there would be three instead of two in the firm and instead of the firm being "Curtis and Collins," it should be "Curtis, Collins and Holbrook."

12. Complainant excepts to the finding and report of the Master (page 71) that the relation between Tuman and Holbrook of equal partnership, "was not known as such by the other parties," on the ground that the same is not sustained by the evidence in that it appears from the testimony of E. S. Collins that during the early operations in Plumas County he learned of the relationship between Holbrook and Tuman.

13. Complainant excepts to the finding and report of the Master (page 71) that "It must be perfectly apparent that as regards all these lands acquired by the use of forest reserve scrip the relationship between Curtis and Collins and the defendant company, their assignee, on the one hand, and Holbrook and Tuman on the other, was in no [1139] sense that of partners or of principal and agent" in that the same is not sustained by the evidence and that the same is not a proper construction of the contract referred to as Exhibit "B" establishing the relationship between the various parties.

14. Complainant excepts to the finding and report of the Master (page 71) that "It is perfectly

clear that Curtis and Collins and the company on the one hand and Holbrook and Tuman on the other, the latter undisclosed, dealt at arm's-length as adversary parties in any transaction of purchase and sale," in that it is not supported by the evidence and is contrary to the evidence as shown by the various contracts drawn between the parties and introduced in evidence and the testimony of T. D. Collins, E. S. Collins, J. G. Curtis, D. G. Curtis, Geo. E. Tuman, Chas. E. Holbrook, Jr., and Chas. A. Shurtleff.

15. Complainant excepts to the finding and report of the Master (bottom page 71, top page 72) that "Collins stated that they would be willing to take these lands if the titles were absolutely good," and "E. S. Collins assented to the acquiring of timber and stone entries if everything about the entry was fair, above-board, and legal," and "The details were not discussed and undoubtedly Collins and Curtis not only desired that the title should be acquired in a legal manner, but had every confidence in Holbrook that they would be so acquired," on the ground that the same is not supported by the evidence and that it fails to take into consideration the circumstances under which said conversations were had and the total disregard of proper business safeguards in allowing the actions of Holbrook in carrying out the acquiring of the timber and stone lands as is evidenced by the testimony given by D. G. Curtis, J. G. Curtis, T. D. Collins, E. S. Collins, G. E. Tuman, Chas. H. Holbrook, Jr., Chas. E. Gregory and Chas. A. Shurtleff.

18. Complainant excepts to the finding and report of the Master (page 73) that "There is no evidence at all that the Curtises or Collinses or the Curtis, Collins and Holbrook Company, after its organization, supplied Holbrook and Tuman or either of them or anyone else [1140] with money to acquire timber and stone entries, as was done by them in the case of the scrip. The money used was that which represented Holbrook's and Tuman's profit on the scrip sales" in that the same does not take into consideration the fact that to carry on these operations would require close on to $100,000, and that under the terms of the contract Holbrook did not receive in cash over $10,000 as profits out of the same with which to carry on said operations, and in that the Master fails to take into consideration the fact that portions of the money used in the acquiring of the lands herein were deposited in the Bank of California in the name of Collins and Holbrook and in this connection complainant specifically excepts to the ruling of the Master during the taking of testimony refusing to admit the account of Collins and Holbrook with the Bank of California during the years 1902 and 1903 and 1904 in evidence for the purpose of establishing that Collins had an interest in the fund.

19. Complainant excepts to the finding and report of the Master (page 73) giving weight to the testimony of Tuman that "There was at all times available for this purpose, the fund of at least $30,000 in cash," in that, as Tuman testifies, Holbrook had charge of the cash during the whole of

these transactions and as he needed the money the same was furnished him by Holbrook for carrying on the operations.

21. Complainant excepts to the finding and report of the Master (page 73) that "All this money was handled by Holbrook and kept in his name," in that the same is not supported by the evidence in that it appears that part of the money used in the acquiring of the lands was kept in the name of Collins and Holbrook in the Bank of California.

32. Complainant excepts to the finding and report of the Master (page 79) that "I am not able to give this fact of the assembling of the lands in Gregory any special significance as regards the question of fraud in these entries," in that the same is not supported by the evidence in that all the evidence tends to show that said lands were taken in the name of Gregory for the purpose of concealment and for the purpose [1141] of assisting Holbrook and Tuman and the corporation to conceal the fraud and that it does not take into consideration the fact that Tuman tells one story upon this point and that Holbrook tells another story upon this point; that the answer of the defendants failed to disclose that they were purchasing the lands from Holbrook and as a matter of fact would lead one to believe at all times that the company was purchasing the lands from Gregory; that when Tuman was asked before the trial what was the reason for taking the deeds in Gregory's name, he refused to give any explanation, stating that he preferred to keep that matter to himself until called upon to testify on the stand; fur-

ther that Gregory being unconnected in any business way with Holbrook or Tuman and not being known in the vicinity to be operating in timber lands, the deed to him would not bear the same significance to a person making an investigation as it would to Holbrook or Tuman who were persons well known in the field and known to be operating in timber lands and in a great many cases the entryman did not know the name of the person to whom he conveyed the land and it would therefore be impossible to locate the said Gregory in those cases, and further it fails to take into consideration the fact that the deeds from the entrymen to Gregory were kept off the records until after patent issued, although the deeds from Gregory to the corporation had been executed for a period of over a year prior to the issuance of the patent; and further, it fails to take into consideration the fact that in the lending of the money Tuman and Holbrook did not use their own names to lend the money in, but used the name of Elam in a few instances, but in the majority of cases used the name of Lewis, who was also a person unknown in the community. Also it fails to take into consideration the manner in which the deeds of most of the entrymen were executed, the general plan being to take the entryman in before a notary where the deed had already been prepared, telling him to sign the papers and paying him his $100.

34. Complainant excepts to the finding and report of the Master [1142] (page 80) that "The transfer of the lands involved in these suits was actively concluded between D. G. Curtis, represent-

ing Curtis and Collins, the purchasers, and Holbrook in his own behalf and that of Tuman, the latter being undisclosed," in this, that the only testimony on the subject of the actual payment of the money to Holbrook is that of D. G. Curtis in which he states that he paid for the same with checks of the company and that all the witnesses testified to the purchase of the land by the company from Holbrook and that the only evidence that it was Collins and Holbrook who might have been buying the lands, is contained in the leading and suggested questions of counsel for the defendant. And further excepts to this finding on the ground that the evidence outside of the bald statement of the various witnesses on behalf of the defendant that the company purchased the land from Holbrook tends to show and establish that Holbrook was not selling the land to the company as an independent operator, but was really the agent of the company in the purchasing of the lands and that at all times he was purchasing the lands for the company and that at the time the transaction was taking place, it was so considered by all the stockholders of the corporation, as is evidenced by the testimony of D. G. Curtis, G. E. Tuman, J. G. Curtis, E. S. Collins, T. D. Collins and Chas. Holbrook, Jr., in that they discussed the method of acquiring the land by buying entries made by timber and stone entrymen, that they were all suspicious of that method of acquiring timber land titles, that they actually did not believe that a solid body of timber land could be acquired by this means legally and successfully, that

a solid body of timber land was actually acquired by this method, and that the corporation and none of its officers ever in any way undertook to check up Mr. Holbrook to see that he had deeds from the entrymen for the land which the company got through the conveyances from Mr. Gregory, and in that it further fails to take into consideration the fact that Holbrook had control of the finances of the corporation and all of its affairs and ran its business solely, from the time of its inception until he left [1143] the company, with merely the acquiescence of all parties that he might pay for said land as high as $10 an acre and that said acquiescence was obtained through the agency, efforts and influence of D. G. Curtis, who was to be paid a commission on the purchase price of the lands, and further that at the time the timber and stone entries were purchased Mr. E. S. Collins knew of the relations between Holbrook and Tuman, and Tuman was not an undisclosed party to the transaction. (Note testimony of E. S. Collins.)

35. Complainant excepts to the finding and report of the Master (page 80) that "The money paid for these timber and stone lands was paid by Curtis and Collins and not by the company," in that the distinction made by the Master is not made by the evidence and that all parties, at the time the transaction was taking place, were considering that Collins and Curtis were putting up the money and Holbrook was putting up his time and the company was getting the title to the land and Curtis and Collins were getting stock at par for the amounts

of money which they advanced and Holbrook was getting stock and money for the lands turned in.

36. Complainant excepts to the finding and report of the Master (page 80) "This is in analogy as to the contract requirements of scrip lands, which, as has been seen (*supra*, p. 70), contemplated the securing of lands by other means if necessary than that of using scrip," in this, that the evidence shows that when they came to acquiring the land under the timber and stone act, the defendant corporation and T. D. Collins, E. S. Collins, D. G. Curtis, J. G. Curtis, C. H. Holbrook, Jr., and Sr., and Geo. E. Tuman, went into the transaction relying entirely upon each other's oral word, without the scratch of a pen to evidence the transaction in any way and without having the details of the transaction in any way checked up by an attorney. In short, all the methods of precaution that were taken by the various parties in acquiring the land by the so-called scrip method, which was legal, were abandoned when it came to acquiring the land under the Timber and Stone Act, which was illegal. [1144]

37. Complainant excepts to the finding and report of the Master (page 80) that "A transcript of the account (Curtis, Collins and Holbrook Co. with the Bank of California) was produced and not introduced by the Government. The contention of the United States was that Holbrook was paid by the company. I must assume therefore, that the account showed only what other witnesses testified was the fact (T. R. 3072), namely, that except where the company bought direct, its expenditures were only

for trivial matters and not involving the purchase of those timber and stone entries," in that the same is not supported by the evidence in that the only person who testified to any money being paid to Chas. H. Holbrook, Sr., was D. G. Curtis, in which he states that he signed the check paying for these lands and that it was the Curtis, Collins and Holbrook check. The testimony of Holbrook, Jr., is to the effect that he knows nothing of the manner in which his father received pay for the lands. The burden being upon the defendant, who was a *bona fide* purchaser, the Government was entitled to rely on the testimony of the defendant's witnesses D. G. Curtis, and if there was anything in the account which tended to offset Mr. Curtis' testimony, the burden was not upon the Government to introduce the evidence but upon the defense and no adverse assumption should be made to the Government for failure to introduce this record in view of the fact that before that time the Government had offered the account of Collins and Holbrook with the Bank of California, which was refused admission, in evidence and in view of the fact that the personal account of Chas. Holbrook, Sr., was destroyed by the fire of 1906 and in view of the fact that the defense had an equal opportunity to introduce this account in evidence and failed to do so.

38. Complainant excepts to the finding and report of the Master (page 81) that "these resolutions recited the proposal by T. D. Collins and J. D. Curtis, in writing, to sell the lands in question to the company in return for stock issued to them at

par and the acceptance of these proposals by the company," in that, the same does not [1145] take into consideration the testimony of T. D. Collins, J. G. Curtis, D. G. Curtis, E. S. Collins and G. E. Tuman, to the effect that so far as the Curtises and the Collinses were concerned, it was purely a question of putting up the money and receiving the stock to the corporation; the details of getting the title into the corporation were none of their concern and the evidence does not in any way show that either Collins or Curtis considered that they were buying the timber lands themselves but that they were putting up the money, getting stock for the same and that the corporation was getting the timber land.

51. Complainant excepts to the finding and report of the Master (page 96) that "The facts of the cases at bar are on all fours with the cases just quoted," in that D. G. Curtis, J. G. Curtis, T. D. Collins, E. S. Collins, G. E. Tuman and Chas. Holbrook, Jr., according to their testimony, all agree on the fact that the titles on behalf of the company at the time of their being acquired were examined by no one and that the evidence shows that everything was left to Holbrook to determine whether or not the land was the character of land which the company desired, whether it had sufficient timber on it, whether the title was good or not, whether or not the title had actually been passed to the company, the paying for the land was under his own control and was paid on his own and his son's statement and on no one's else.

52. Complainant excepts to the finding and re-

port of the Master (page 96) that "Curtis and Collins on the one hand and Holbrook on the other, were plainly seen to have been dealing at arm's-length in an adversary relation as vendee and vendor respectively," in that there is no evidence to support said finding in the record, and that it fails to take into consideration the fact that at the very outset of negotiations Mr. Collins insisted on Mr. Holbrook's becoming a member of the concern and taking a substantial interest therein and that thereafter Holbrook did take a substantial interest therein and increased his holdings in the company over and above the amount required by the original contract, that he had practically the exclusive [1146] charge of the affairs of the corporation and that after the first transaction relating to the 42,000 acres of land acquired by scrip, the precautions ordinarily taken by men buying timber land were not followed, that no examination of titles was had, that Holbrook's word that he had the titles was taken, also his word was taken that the deeds covered the quantity of land that he represented, that no examination of the lands was made by either Curtis or Collins or anyone else independent of Holbrook as to the quality and quantity and character of timber upon the lands or that the lands were timber in their character at all, and that in all their relations it is shown that Holbrook and Curtis and Collins understood each other perfectly and were all working to the common end of getting the title to the timber land that was at that time in the Government, into the corporation which was to be formed and which was actually

formed for the purpose of holding the timber lands.

54. Complainant excepts to the finding and report of the Master (page 96) that "Curtis and Collins made no loans of money to acquire these timber and stone lands as did Clark," in that the same is not supported by the evidence, in that it fails to consider the facts that the timber operations carried on by Holbrook were too extensive for him to be able to carry on on the small capital of $10,000 to which he was entitled and which was paid him under the terms of his first contract with Curtis and Collins, and further that part of his operations were carried on prior to the time of his receiving the money from Curtis and Collins under his first contract as he could not have received the money under the contract prior to the formation of the corporation, to wit, the 15th day of August, 1902, and that Holbrook who had a personal account in the Bank of California, should have deposited the money with which he carried on these timber operations in the name of Collins and Holbrook in the Bank of California.

55. Complainant excepts to the finding and report of the Master (page 96) that the money was Holbrook's own, the profit of his previous [1147] dealings with the scrip lands in that the evidence establishes that Holbrook did not have the money to carry on these extensive dealings, as the profits were not enough nor did he receive them in time to carry on these dealings.

58. Complainant excepts to the finding and report of the Master (page 99) that "It thus conclusively

appears that except from conclusions that may follow from the facts that Holbrook was at the time that these titles were acquired, vice-president and manager of the Curtis, Collins and Holbrook Co., neither J. G. Curtis, nor T. D. Collins, nor the company itself, nor any of its officers, at any time had any actual knowledge or notice or any constructive notice arising from the facts that would put them on inquiry as to the fraud which the government claims constitutes its equity," and to all the findings of fact preceding said finding and the discussions of the same beginning with page 96, continuously up to said findings, in that, said findings and discussions fail to take into consideration the fact that at the time Holbrook discussed with the Collinses and Curtises the advisability of purchasing timber and stone entrymen's claims, E. S. Collins knew that this method of acquiring timber lands had resulted in scandal in Washington and that he was desirous that no scandal arise in connection with their lands, that he did not believe that a solid body of timber land could be obtained legally under the Timber and Stone Act for if they were acquired legally someone else would buy out the entrymen, and that the company did, by this method, acquire a solid body of timber land, namely, the land which Remick had entrymen take up; and that other portions of the land taken up were also solid and adjoined land which the Curtis, Collins and Holbrook Co. had previously acquired by the scrip method; and the fact that in all their discussion, which was considerable, about acquiring land by the purchase of claims taken up under the

Timber and Stone Act, they never discussed or consulted with their attorney, C. A. Shurtleff; and that after having decided upon the acquiring of land which had been taken up under the [1148] Timber and Stone Act, they should never have discussed the matter of the method of acquiring these timber claims again with Mr. Holbrook; that there was no investigation made of the titles in any way, either that the lands had ever been taken up under the Timber and Stone Act or that the entryman and his successor in interest had ever made deeds conveying the title to said lands to the company; and that the deeds from the entrymen were obtained so shortly after the date of making final proof, which of itself has been held to be not sufficient to charge notice, yet taken with all the other circumstances in this case is indicative either of actual knowledge of the fraud or a careful and assiduous effort on the part of the Curtises and Collinses not to learn of any fraud; and the fact that the slightest investigation of the titles would have established, accepting their own construction of the facts, if not that a fraud had been perpetrated upon the government, that a fraud had been perpetrated upon them in that Holbrook was representing that he could not get the land for $7.50 per acre, whereas as a matter of fact, he was getting most of it for about $3.75 per acre, the discovery of which fraud would have meant Holbrook's ruination, and the fact that at the time they were purchasing these lands, they were not purchasing the legal title but were merely purchasing the equitable title which of itself should have made them more careful in regard

to the title which they were acquiring; and the fact that the deeds from the entrymen to Gregory had not been recorded at the time the corporation got its title; and the fact that the corporation did not place its deeds from Gregory of record in a great many cases until after the institution of these suits, although at the time that Holbrook sold out it became definitely and certainly known that the corporation's deeds had not been placed of record; and the fact that the corporation did not have the deeds from the entrymen to Gregory recorded until after patent had issued in each case; and the fact that Tuman was paid $150,000 for his 200 shares of stock, which Collins did not believe to be worth more than half the price paid, the excuse [1149] being given for such price that he was afraid that a third person, Durphy, whom he did not wish to have in the corporation, was going to get the stock, which excuse becomes trivial when it is considered that over 5,000 shares of the stock had been issued and that T. D. Collins and E. S. Collins owned all of said stock with the exception of the 200 shares which Tuman owned, and had absolute control of the corporation and that said corporation was a holding company, holding nothing but timber land and was not operating any of its timber and that said stock was a source of expense and would be for years to come; and that Tuman's stock was purchased after the commencement of these suits; and that Tuman refused to state to the Government's attorney before he went on the stand to testify, why title was taken in the name of Gregory from the entrymen, and the source of the money which was used

for operating in the field in acquiring these lands; and the fact that in Tuman's settlement with Holbrook he did not get more than half of what he was entitled to and that said contract of settlement was negotiated by T. D. Collins; and the fact that J. E. Remick, one of the locators was always in court and the peculiar changes in the testimony of A. W. Savercool and Warren Stark during the course of the trial taken in connection with James Savercool's and Willis Savercool's testimony, and the character of the testimony of James Stark, Burt Burris, and other witnesses, and the fact that in the purchase of some of the lands Holbrook had to pay $10 an acre for the land and that the corporation got the land for the price of $10 per acre; and the fact that Collins knew that on other lands than the land acquired under the Timber and Stone Act, and the land acquired under the contract, Exhibit "B" in evidence, Holbrook did not get any commissions from the company, although he negotiated the purchase for the company and was its purchasing agent therein; and the fact that Holbrook was the agent for the company to determine the character, quantity and quality of the timber on the lands purchased and the fact that Holbrook was the agent of the company to determine that the titles were [1150] regular; and the fact that Holbrook was the agent of the company to determine that the title had been properly vested in the company; and the fact that Holbrook was the managing director and vice-president of the corporation and had complete charge of all the papers and records of said corporation, and that his

signature was necessary on the corporation checks.

In support of the foregoing exception, we rely on the transcript of the testimony of T. D. Collins, E. S. Collins, J. G. Curtis, D. G. Curtis, Chas. H. Holbrook, Jr., G. E. Tuman, Chas. A. Shurtleff, J. E. Remick, John Heppe, Irving Moulton and the testimony of all the entrymen as showing the method of procedure in all cases in taking up the land and the testimony of Edward Brase, Burt Burris, F. C. Hall, A. A. Hall, Mrs. Cora Hall, Chas. E. Gregory, W. G. Lawrence, James Perini, Frank Sorsoli, Chas. E. Swayze and Arthur E. Vollmer.

59. Complainant excepts to the finding and report of the Master (page 101) that "It therefore comes to this: That Tuman is charged with notice of whatever fraudulent agreement Remick or Heppe may have made with an entryman by a presumption in the law of agency; that Holbrook likewise is charged with notice by reason of a presumption arising out of a relation of partnership between him and Tuman and that the corporation is charged with notice by reason of a presumption arising out of Holbrook's tenure of the office of vice-president of its board. It does not strike one as just that the defendant corporation should lose the property which it has purchased by reason of this pyramiding of legal fiction," in that it fails to take into consideration the fact that Holbrook, during the time these lands were being acquired by the entrymen from the Government, was frequently in the field having consultations with Tuman and was handling the money which was advanced to the entrymen through Tuman

for the purpose of paying the Government for the land taken up by the entrymen; that the general scheme of operation which was carried on by Tuman and Holbrook in Plumas County contemplated the fraudulent acquiring of [1151] the land by the entrymen and that, as Tuman states, Holbrook knew everything that he knew about the operations of acquiring the timber land, and therefore Holbrook's knowledge is more than that of a mere presumption of legal fiction but must be held to be actual knowledge.

60. Complainant excepts to the finding and report of the Master (page 101) that "When the company took the conveyance from Gregory, though Holbrook was its vice-president at the time, he was at the same time in an adversary relation, he himself being the seller of the property. It is idle to say that he would not disclose any knowledge of fraud in the titles which he is presumed to possess (contrary to the actual fact). Holbrook was not buying this land for the company. He was buying it from others and selling it to the company at a considerable profit above its cost to him, which profit he retained and was expected to retain. It cannot be assumed that he told or would tell the company of any defect in its title and allowing such assumption in reason, the law does not raise any presumption of notice," in that the evidence fails to establish any adversary relation between Holbrook and the corporation; that it fails to take into consideration the fact that at the outset, before any timber lands had been acquired under the Timber and Stone Act, Holbrook had a

discussion with the Curtises and Collinses as to the advisability of obtaining timber land by buying out settlers who had acquired land under the Timber and Stone Act; that there was at that time a lot of land to be acquired and that there was no scrip to acquire it with and that he was authorized by them in the interests of the company that was to be formed to buy out entrymen who had acquired title to the land under the Timber and Stone Act and that he should receive as compensation for his services the difference between what he would have to pay the entrymen for the land and $7.50 an acre, which the company would pay him for the land; that at the time this conversation took place the Collinses did not believe that a solid body of timber land which had been taken up under the Timber and Stone Act could be legally acquired by them, [1152] in that if legally acquired, someone else would come in and buy the timber land from the entrymen; that Holbrook was made the agent for the purpose of determining the character, quantity and quality of the timber that was upon the land and that it was adequate and satisfactory; that Holbrook was made their agent for the purpose of acquiring the title and seeing that the entries were regular in form and in conformity with law, and the instruments of conveying the title of the entrymen to the corporation were in form legally sufficient; and that no attorney was employed to see that the title had been conveyed to the company; that Holbrook was relied upon for the whole matter and was the agent of the company for that purpose; that at the time Holbrook started on his plan of opera-

tions in Plumas County he was not buying the land for himself from the entrymen, but he was buying it with the definite understanding with the Curtises and Collinses that the corporation should get the land; that there was no attempt on the part of the corporation or any of its officers in the slightest to check Holbrook in his operations and as a matter of fact, there was a studious avoidance on their part of the ordinary business precautions that exist between vendor and vendee in connection with every act on the part of the corporation and the Curtises and Collinses in the acquiring of the title to the timber lands by the corporation, and that the circumstances of this case do not bring the case within the exception to the rule that where the agent's interests are antagonistic to that of the corporation, his knowledge is not presumed to be that of the corporation in that in carrying out the details of this transaction it appears that the Curtises, Collinses and Holbrooks were all working in harmony with perfect confidence and an understanding between them with all of them fully alive to the situations and dangers under which the land was being acquired and the leaving of everything to Holbrook to carry on in his own way unhampered. If the younger Curtis and the two Collinses did not know of Holbrook's fraudulent operations, the same was due to their wilfully closing their eyes to circumstances [1153] which, at the outset, they did know must occur in a solid body of timber land was delivered to the Curtis, Collins and Holbrook Co. by the purchasing of the lands taken up by entrymen under the Timber and Stone Act.

60A. Complainant excepts to the finding and report of the Master (page 104) that "If here not only Holbrook but Curtis and Collins had been charged with notice, there is no question but what the company would be held to be so charged," in that it infers that Curtis and Collins did not have notice of the fraud, which fails to take into consideration all the circumstances of the relations between Holbrook and Curtis and Collins and the full understanding that existed between them and if D. G. Curtis and the two Collinses did not know of the manner of the operations of Holbrook, it was due to a wilful closing of their eyes to the things which they knew must take place in order to deliver a solid body of timber land to the corporation.

61. Complainant excepts to the finding and report of the Master (page 105) that "Assuming that the transaction here in question occurred between Curtis, Collins and Holbrook Co. and Holbrook, it has been seen that their relations were that of vendee and vendor respectively." "Remick and the others therefore could in no sense be considered subagents of the company; they were agents of Holbrook and Tuman only. The notice therefore which they had by reason of their dealings with Holbrook may be imputed to Holbrook but could not be imputed to the company," in that this proposition assumes the point in issue to be whether or not Holbrook was the agent of the corporation. If Holbrook was the agent of the corporation in these transactions and in the acquiring of these lands, Remick and the others who assisted in the

locating must also be considered as subagents of the company and further, it fails to take into consideration the fact that Holbrook was thoroughly familiar with the operations in the field in the acquiring of the lands from the Government.

62. Complainant excepts to the finding and report of the Master [1154] (page 105) that "In what has gone before I have assumed that the transaction was indicated by the way in which the deeds ran, that it is to say, that Holbrook sold to the Curtis, Collins and Holbrook Company. As a matter of fact, as has been seen before, it is not an exact statement. The entrymen conveyed the title to Gregory who held as trustee for Holbrook. Holbrook meanwhile was under contract to sell these lands to T. D. Collins and J. G. Curtis at $7.50 an $10.00 an acre, part cash and part stock of the corporation. Curtis and Collins at no time paid cash into the corporation for their stock, but made a proposition to transfer land for stock which was accepted. Undoubtedly the settlement as between Holbrook and Curtis and Collins and between Curtis and Collins and the Curtis, Collins & Holbrook Company was simultaneous. Though Gregory after the entrymen's deeds held the legal title, the entire equitable title rested in Holbrook his beneficiary, and when Holbrook fulfilled his contract with Curtis and Collins this equitable title passed to Curtis and Collins, Gregory becoming their trustee for a point of time, and at their direction, in pursuance of their proposal to the company, Gregory conveyed the legal title to the company," in that there is no

evidence to support said finding and as the Master himself says, in his part of the report, all of this is more or less theoretical. The evidence shows that the deeds from the entrymen were taken to Gregory; that Gregory conveyed to the Curtis, Collins and Holbrook Company. The testimony of Dan Curtis is to the effect that the corporation paid Holbrook for the land. The same is true of the testimony of T. D. Collins and E. S. Collins. The evidence that Curtis and Collins were buying from Holbrook is contained entirely within the leading and suggestive questions of counsel for the defendant which the witnesses themselves are unable to keep in mind, except when having it suggested to them continually, showing that at the time the transaction took place, all the parties believed that the corporation was purchasing the land not from T. D. Collins and D. G. Curtis, but from someone from whom Holbrook had [1155] negotiated the purchase of the land, and that at the time the transaction took place they knew that Gregory was not the real person in interest, because as T. D. Collins states, he does not know why the land was taken in the name of Gregory, except that he understood that it had to be assimilated in someone's name in order to meet the legal requirements of this state to get the title into the corporation. As T. D. Collins testifies, he deposited his money in the Bank of California, and got his stock, one share representing $100 which he put up. The manner of paying for the lands was attended to by whomever was out here.

63. Complainant excepts to the finding and report of the Master (page 106) that "If Curtis and Collins had paid Holbrook part cash and part from the stock which they already had by reason of the scrip transactions, they might have taken a deed of the legal title directly from Gregory and later conveyed that legal title by another deed to the Curtis, Collins and Holbrook Company," in that there is no evidence to show that Curtis and Collins paid Holbrook with stock which they had already secured by reason of the scrip transactions and as a matter of fact, the title never passed through them and on no theory of law could have been purged of fraud by such a transaction without the legal title actually having passed through said Curtis and Collins.

64. Complainant excepts to the finding and report of the Master (page 106) that "it is perfectly clear that Curtis and Collins had neither actual nor constructive notice of any possible fraud in these cases," in that at the outset they knew there was danger of fraud being perpetrated in acquiring the lands; they did not expect to get a solid body of timber land without fraud being perpetrated; they got a solid body of timber land and they took particular pains never to investigate or to allow anything to come to their attention which might put them on notice, and further they were dealing as partners with Holbrook in that Curtis and Collins were putting up the money and Holbrook was getting the land and the way their interests were being [1156] divided was on a basis of the land being

valued at $7.50 an acre or $10 an acre and Holbrook's interest was to be the difference between the cost of the land and the value for which he turned it in.

64A. Complainant excepts to the finding and report of the Master (page 106) that "the Curtis, Collins and Holbrook Company, even under the vice-presidency of Holbrook, taking it from two innocent purchasers, would have held free and clear of the Government claim," in that there is no evidence to show that the Curtis, Collins and Holbrook Co. had any land from two innocent purchasers or from anyone other than the entrymen through the agency of Holbrook and Gregory.

65. Complainant excepts to the finding and report of the Master (page 106) that "The Curtis, Collins and Holbrook Company acquired the land of E. L. Cooksey, described in the bill against him, and all the other lands in this consolidated cause, ... by purchase in good faith for a valuable consideration and without notice, constructive or actual of any equity in behalf of the United States," in that the same does not conform to the allegations of the answer and the defense of *bona fide* purchaser for valuable consideration and without notice being an affirmative defense, has not been established by any evidence and that the Master has failed to take into consideration all the matters specified in exception 58.

66. Complainant excepts to the report of said Master and to "The Summary Findings and Conclusions" (page 131) on the ground that the Master

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erred in making finding No. 2 thereof in this:

A. That the finding "That the said deed was recorded at the request of C. H. Holbrook, Jr., acting in behalf of and at the direction of his father, C. H. Holbrook of September 10, 1904, in the proper records" is not supported by the evidence in that the same would indicate that C. H. Holbrook, Jr., in having said deed recorded was acting as the agent of said C. H. Holbrook and had the custody of said deed for said C. H. Holbrook, whereas, the evidence establishes that when said deed was recorded the title to said land was vested in the Curtis, [1157] Collins and Holbrook Co., respondent herein, and that said deed was held and recorded by said C. H. Holbrook, Jr., as the agent of the said Curtis, Collins and Holbrook Co.

B. That the finding "That the said Charles E. Gregory was a trustee for said Chas. H. Holbrook in taking and holding title to said land" is not supported by the evidence in that the same would indicate that said Gregory was holding title for the sole benefit of said C. H. Holbrook, whereas the evidence establishes that Holbrook was the operating agent for the combination of Curtis, Collins and Holbrook who formed the Curtis, Collins and Holbrook Co. for the purpose of holding these and other timber lands which they had accumulated.

C. That the finding "That said conveyance was made in pursuance of a prior contract between said C. H. Holbrook on the one hand, and T. D. Collins and J. G. Curtis on the other, whereby Holbrook agreed to sell to Curtis and Collins or to said corpo-

ration, if so directed by Curtis and Collins, and said Curtis and Collins agreed to buy from said Holbrook the lands described in said deed at the rate of either $7.50 or $10.00 an acre, and said Curtis and said Collins paid to said C. H. Holbrook a valuable consideration for said conveyance to said corporation, namely, part cash and part stock of said corporation transferred to said Holbrook, the total purchase price so paid being at the rate of $7.50 or $10 per acre" is not supported by the evidence in that the same would indicate that Holbrook was selling timber land to Curtis and Collins whereas the evidence establishes that Holbrook had no timber land to sell. The evidence establishes that Curtis, and Collins and Holbrook had entered into an agreement for the formation of a corporation to hold timber lands in which each of them, including Holbrook, was to have a substantial interest; that they desired to get title to a large body of timber land, the land involved in this suit being a part thereof, that said land belonged to the complainant and was vacant Government land; that Holbrook was authorized to get title to this land by purchasing the claims of persons who should enter the [1158] land; that Holbrook was to be the selector of the lands desired and conduct all the negotiations necessary to acquire title to said lands; that Collins and Curtis were to put up the necessary money and Holbrook his time and knowledge; that for said money Collins and Curtis should get stock at $100 per share, and to fix Holbrook's share in the transaction he was allowed for a time $7.50

and later $10.00 per acre for which he took part stock and part cash, the cash being necessary to carry on the operations.

D. That the finding "That on May 2, 1903, neither T. D. Collins or J. G. Curtis or the Curtis, Collins and Holbrook Co. knew or were charged with knowledge of said fraud hereinbefore set forth or any fraud at all; and the said Curtis and Collins and the said corporation did not know and did not become charged with knowledge of said or any other fraud in the obtaining of said patent until on or about the year 1908; that the said Curtis, Collins and Holbrook Co., a corporation, was therefore at the time of its acquisition of the land conveyed to said Cooksey by said patent a *bona fide* purchaser for a valuable consideration and without notice or knowledge of any fraud against the United States; that said deed to said corporation was recorded in the proper office at the request of said company on October 18, 1909," is not supported by the evidence and is contrary thereto in that it wholly fails to take into consideration and totally ignores the fact that at the time Holbrook discussed with the Collinses and Curtises the advisability of purchasing timber and stone entrymen's claims, E. S. Collins knew that this method of acquiring timber lands had resulted in scandal in Washington and that he was desirous that no scandal arise in connection with their lands, that he did not believe that a solid body of timber land could be obtained legally under the Timber and Stone Act for if they were acquired legally someone else would buy out the entrymen

and that the company did, by this method, acquire a solid body of timber land, namely, the land which Remick had entrymen take up; and that other portions of the land taken up were also solid and [1159] adjoined land which the Curtis, Collins and Holbrook Co. had previously acquired by the scrip method; and the fact that in all their discussion, which was considerable, about acquiring land by the purchase of claims taken up under the Timber and Stone Act, they never discussed the matter or consulted with their attorney, C. A. Shurtleff; and that after having decided upon the acquiring of land which had been taken up under the Timber and Stone Act, they should never have discussed the matter of the method of acquiring these timber claims again with Mr. Holbrook; that there was no investigation made of the titles in any way, either that the lands had ever been taken up under the Timber and Stone Act or that the entryman and his successor in interest had ever made deeds conveying the title to said lands to the company; and that the deeds from the entrymen were obtained so shortly after the date of making final proof, which of itself has been held to be not sufficient to charge notice, yet taken with all the other circumstances in this case is indicative either of actual knowledge of the fraud or a careful and assiduous effort on the part of the Curtises and Collinses not to learn of any fraud; and the fact that the slightest investigation of the titles would have established, accepting their own construction of the facts, if not that a fraud had been perpetrated upon the Government, that

a fraud had been perpetrated upon them in that Holbrook was representing that he could not get the land for $7.50 per acre, whereas, as a matter of fact, he was getting most of it for about $3.75 per acre, the discovery of which fraud would have meant Holbrook's ruination, and the fact that at the time they were purchasing these lands, they were not purchasing the legal title but were merely purchasing the equitable title which of itself should have made them more careful in regard to the title which they were acquiring; and the fact that the deeds from the entrymen to Gregory had not been recorded at the time the corporation got its title; and the fact that the corporation did not place its deeds from Gregory of record in a great many cases until after the institution of these suits, although at the time [1160] that Holbrook sold out it became definitely and certainly known that the corporation's deeds had not been placed of record; and the fact that the corporation did not have the deeds from the entrymen to Gregory recorded until after patent had issued in each case; and the fact that Tuman was paid $150,000 for his 200 shares of stock, which Collins did not believe to be worth more than half the price paid, the excuse being given for such a price that he was afraid that a third person, Durphy, was going to get the stock, whom he did not wish to have in the corporation, which excuse becomes trivial when it is considered that over 5,000 shares of the stock had been issued and that T. D. Collins and E. S. Collins owned all of said stock with the exception of the 200 shares

which Tuman owned, and had absolute control of the corporation and that said corporation was a holding company, holding nothing but timber land and was not operating any of its timber lands and that said stock was a source of expense and would be for years to come; and that Tuman's stock was purchased after the commencement of these suits; and that Tuman refused to state to the Government's attorney before he went on the stand to testify, why title was taken in the name of Gregory from the entrymen, and the source of the money which was used for operating in the field in acquiring these lands; and the fact that in Tuman's settlement with Holbrook he did not get more than half of what he was entitled to and that said contract of settlement was negotiated by T. D. Collins; and the fact that J. E. Remick, one of the locators was always in court and the peculiar changes in the testimony of A. W. Savercool and Warren Stark during the course of the trial taken in connection with James Savercool's and Willis Savercool's testimony, and the character of the testimony of James Stark, Burt Burris, and other witnesses, and the fact that in the purchase of some of the lands Holbrook had to pay $10 an acre for the land and that the corporation got the land for the price of $10 an acre; and the fact that Collins knew that on other lands than the land acquired under the Timber and Stone Act, and the land acquired under the contract [1161] Exhibit "B" in evidence, Holbrook did not get any commissions from the company, although he negotiated the purchases for the company and was its

purchasing agent therein, and the fact that Holbrook was the agent for the company to determine the character, quantity and quality of the timber on the lands purchased and the fact that Holbrook was the agent of the company to determine that the titles were regular; and the fact that Holbrook was the agent of the company to determine that the title had been properly vested in the company; and the fact that Holbrook was the managing director and vice-president of the corporation and had complete charge of all the papers and records of said corporation, and that his signature was necessary on the corporation checks.

In support of the foregoing exceptions, A. B. C and D, to the summary of special findings and conclusions of the Master we rely on the transcript of the testimony of T. D. Collins, E. S. Collins, J. G. Curtis, D. G. Curtis, Chas. H. Holbrook, Jr., G. E. Tuman, Chas. A. Shurtleff, J. E. Remick, John Heppe, Irving Moulton and the testimony of all the entrymen as showing the method of procedure in all cases in taking up the land, and the testimony of Edward Brase, Burt Burris, F. G. Hall, A. A. Hall, Mrs. Cora Hall, Chas. E. Gregory, W. G. Lawrence, James Perini, Frank Sorsoli, Chas. E. Swayse and Arthur E. Vollmer.

IV.

The Court erred in sustaining the conclusion of the Master that the burden of proof was upon the plaintiff to show that the defendant Curtis, Collins & Holbrook Company was not a *bona fide* purchaser for value, and without notice of the fraud.

V.

The Court erred in holding and concluding that the burden of proof was upon the plaintiff to show that the defendant Curtis, Collins & Holbrook Company was not a *bona fide* purchaser for value, and without notice of the fraud. [1162]

VI.

The Court erred in sustaining the conclusion of the Master that the defendant Curtis, Collins & Holbrook Company was a *bona fide* purchaser for value, and without notice of the fraud practiced upon plaintiff in the acquisition of the patent to the land described in the bill of complaint.

VII.

The Court erred in holding and concluding that the defendant Curtis, Collins & Holbrook Company was a *bona fide* purchaser for value, and without notice of the fraud practiced upon the plaintiff in the acquisition of the patent to the land described in the bill of complaint.

VIII.

The Court erred in sustaining the finding and conclusion of the Master that the defendant Curtis, Collins & Holbrook Company was not bound by the knowledge of Charles H. Holbrook of the fraud practiced upon the plaintiff in the procurement of said patent to said land, and that Charles H. Holbrook did not act as agent, representative or member of the defendant Curtis, Collins & Holbrook Company in the procurement of title to the said land by Curtis, Collins & Holbrook Company.

IX.

The Court erred in holding and concluding that the defendant Curtis, Collins & Holbrook Company was not bound by the knowledge of Charles H. Holbrook of the fraud practiced upon the plaintiff in the procurement of said patent to said lands, and that said Charles H. Holbrook did not act as agent, representative or member of the defendant Curtis, Collins & Holbrook Company in the procurement of title to the said land by said Curtis, Collins & Holbrook Company.

WHEREFORE, the plaintiff prays that the said decree be reversed; that the said United States Circuit Court of Appeals for the Ninth Circuit shall cause the proper decree to be entered whereby the said patent issued to Edward L. Cooksey, on the 8th day of June, 1904, for the SW. ¼ of Sec. 15, Twp. 25 N. R. 10 E, shall be cancelled and the title to the [1163] said lands involved in this suit shall be restored to the United States of America; and such further relief as the plaintiff may be entitled to receive.

Dated October 12, 1917.

JNO. W. PRESTON,
United States Attorney for the Northern District of California.

ED. F. JARED,
Assistant U. S. Attorney.

[Endorsed]: Filed Oct. 11, 1917. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [1164]

In the Southern Division of the United States District Court for the Northern District of California, Second Division.

No. 15,077.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

EDWARD L. COOKSEY et al.,
Defendants.

Order Allowing Appeal.

On motion of Ed. F. Jared, Assistant United States Attorney, solicitor and counsel for plaintiff, it is hereby ORDERED that an appeal to the Circuit Court of Appeals for the Ninth Circuit of the United States from the decree heretofore filed and entered herein on April 13th, 1917, be, and the same is hereby allowed and that a certified transcript of record, testimony, exhibits, stipulations and all proceedings be forthwith transmitted to the said Circuit Court of Appeals for the Ninth Circuit.

Dated October 11th, 1917.

WM. C. VAN FLEET,
United States District Judge.

[Endorsed]: Filed Oct. 11, 1917. Walter B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [1165]

In the District Court of the United States for the Northern District of California, Second Division, Ninth Circuit.

UNITED STATES OF AMERICA,

Appellant,

vs.

EDWARD L. COOKSEY, CHARLES HOLBROOK, CURTIS, COLLINS and HOLBROOK COMPANY, a Corporation, Being Number 15,077, and 23 Similar Cases Being Numbered in the District Court Clerk's Office as follows: Nos. 15,078, 15,091, 15,097, 15,099, 15,163, 15,164, 15,168, 15,174, 15,105, 15,108, 15,109, 15,180, 15,181, 15,186, 15,187, 15,188, 15,112, 15,113, 15,135, 15,190, 15,195, 15,196, 15,189,

Appellees.

Order Enlarging Time to and Including August 10, 1919, for Filing Statement of Evidence.

These causes coming on to be heard upon the application of the United States of America, plaintiff, for an order enlarging the time in which to file for approval its statement of evidence to be incorporated in the record on appeal as provided for in Equity Rule No. 75, up to and including the 10th day of August, A. D. 1919:

IT IS HEREBY ORDERED that the time in which the United States of America may file for approval its statement of the evidence to be incorporated in the record on appeal as provided for in

Equity Rule No. 75, in the above-entitled causes be and the same is hereby enlarged and extended up to and including the 10th day of August, A. D. 1919, without prejudice to defendants' objection that the time has elapsed in which such order can be made.

Dated this 9th day of June, 1919.

WM. C. VAN FLEET,

United States District Judge for the Northern District of California.

[Endorsed]: Filed June 9, 1919. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [1166]

In the District Court of the United States for the Northern District of California, Second Division, Ninth Circuit.

UNITED STATES OF AMERICA,

Appellant,

vs.

EDWARD L. COOKSEY, CHARLES HOLBROOK, CURTIS, COLLINS and HOLBROOK COMPANY, a Corporation, Being Number 15,077, and 23 Similar Cases Being Numbered in the District Court Clerk's Office as follows: Nos. 15,078, 15,091, 15,097, 15,099, 15,163, 15,164, 15,168, 15,174, 15,105, 15,108, 15,109, 15,180, 15,181, 15,186, 15,187, 15,188, 15,112, 15,113, 15,135, 15,190, 15,195, 15,196, 15,189,

Appellees.

Order Enlarging Time to and Including October 10, 1919, for Filing Statement of Evidence.

These causes coming on to be heard upon the application of the United States of America, plaintiff, for an order enlarging the time in which to file for approval its statement of evidence to be incorporated in the record on appeal as provided for in Equity Rule No. 75, up to and including the 10th day of October, A. D. 1919:

IT IS HEREBY ORDERED that the time in which the United States of America may file for approval its statement of the evidence to be incorporated in the record on appeal as provided for in Equity Rule No. 75, in the above-entitled causes be and the same is hereby enlarged and extended up to and including the 10th day of October, A. D. 1919, without prejudice to defendants' objection that the time has expired in which such an order can be made.

Dated this 11th day of August, 1919.

WM. C. VAN FLEET,

United States District Judge for the Northern District of California.

[Endorsed]: Filed Aug. 11, 1919. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [1167]

In the District Court of the United States for the Northern District of California, Second Division, Ninth Circuit.

UNITED STATES OF AMERICA,

Appellant,

vs.

EDWARD L. COOKSEY, CHARLES HOLBROOK, CURTIS, COLLINS and HOLBROOK COMPANY, a Corporation, Being Number 15,077, and 23 Similar Cases Being Numbered in the District Court Clerk's Office as follows: Nos. 15,078, 15,091, 15,097, 15,099, 15,163, 15,164, 15,168, 15,174, 15,105, 15,108, 15,109, 15,180, 15,181, 15,186, 15,187, 15,188, 15,112, 15,113, 15,135, 15,190, 15,195, 15,196, 15,189,

Appellees.

Order Enlarging Time to and Including December 10, 1919, for Filing Statement of Evidence.

These causes coming on to be heard upon the application of the United States of America, plaintiff, for an order enlarging the time in which to file for approval its statement of evidence to be incorporated in the record on appeal as provided for in Equity Rule No. 75, up to and including the 10th day of December, A. D. 1919:

IT IS HEREBY ORDERED that the time in which the United States of America may file for approval its statement of the evidence to be incorporated .in the record on appeal as provided for in

Equity Rule No. 75, in the above-entitled causes be and the same is hereby enlarged and extended up to and including the 10th day of December, A. D. 1919.

Dated this 26th day of Sept., 1919.

WM. C. VAN FLEET,

United States District Judge for the Northern District of California.

[Endorsed]: Filed Sep. 26, 1919. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [1168]

In the District Court of the United States for the Northern District of California, Second Division, Ninth Circuit.

UNITED STATES OF AMERICA,

Appellant,

vs.

EDWARD L. COOKSEY, CHARLES HOLBROOK, CURTIS, COLLINS and HOLBROOK COMPANY, a Corporation, Being Number 15,077, and 23 Similar Cases Being Numbered in the District Court Clerk's Office as follows: Nos. 15,078, 15,091, 15,097, 15,099, 15,163, 15,164, 15,168, 15,174, 15,105, 15,108, 15,109, 15,180, 15,181, 15,186, 15,187, 15,188, 15,112, 15,113, 15,135, 15,190, 15,195, 15,196, 15,189,

Appellees.

Order Enlarging Time to and Including March 1st, 1920, for Filing Statement of Evidence.

These causes coming on to be heard upon the application of the United States of America, plaintiff, for an order enlarging the time in which to file for approval its statement of evidence to be incorporated in the record on appeal, as provided for in Equity Rule No. 75, up to and including the 1st day of March, A. D. 1920:

IT IS HEREBY ORDERED that the time in which the United States of America may file for approval its statement of the evidence to be incorporated in the record on appeal as provided for in Equity Rule No. 75, in the above-entitled causes be and the same is hereby enlarged and extended up to and including the 1st day of March, A. D. 1920.

Dated this 9th day of December, 1919.

WM. C. VAN FLEET,

United States District Judge for the Northern District of California.

[Endorsed]: Filed Dec. 9, 1919. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [1169]

In the District Court of the United States for the Northern District of California, Second Division, Ninth Circuit.

UNITED STATES OF AMERICA,

Appellant,

vs.

EDWARD L. COOKSEY, CHARLES HOLBROOK, CURTIS, COLLINS and HOLBROOK COMPANY, a Corporation, Being Number 15,077, and 23 Similar Cases Being Numbered in the District Court Clerk's Office as follows: Nos. 15,078, 15,091, 15,097, 15,099, 15,163, 15,164, 15,168, 15,174, 15,105, 15,108, 15,109, 15,180, 15,181, 15,186, 15,187, 15,188, 15,112, 15,113, 15,135, 15,190, 15,195, 15,196, 15,189,

Appellees.

Order Enlarging Time to and Including June 1st, 1920, for Filing Statement of Evidence.

These causes coming on to be heard upon the application of the United States of America, plaintiff, for an order enlarging the time in which to file for approval its statement of evidence to be incorporated in the record on appeal, as provided for in Equity Rule No. 75, up to and including the 1st day of June, A. D. 1920:

IT IS HEREBY ORDERED that the time in which the United States of America may file for approval its statement of the evidence to be incorporated .in the record on appeal as provided for in

Equity Rule No. 75, in the above-entitled causes be and the same is hereby enlarged and extended up to and including the 1st day of June, A. D. 1920.

Dated this 27th day of February, 1920.

WM. C. VAN FLEET,

United States District Judge for the Northern District of California.

[Endorsed]: Filed Feb. 28, 1920. W. B. Maling, Clerk By J. A. Schaertzer, Deputy Clerk. [1170]

In the District Court of the United States for the Northern District of California, Second Division, Ninth Circuit.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

EDWARD L. COOKSEY, CHARLES HOLBROOK, CURTIS, COLLINS and HOLBROOK COMPANY, a Corporation, Being Number 15,077, and 23 Similar Cases Being Numbered in the District Court Clerk's Office as follows: Nos. 15,078, 15,091, 15,097, 15,099, 15,163, 15,164, 15,168, 15,174, 15,105, 15,108, 15,109, 15,180, 15,181, 15,186, 15,187, 15,188, 15,112, 15,113, 15,135, 15,190, 15,195, 15,196, 15,189,

Defendants.

Order Enlarging Time to and Including September 1st, 1920, for Filing Statement of Evidence.

These causes coming on to be heard upon the application of the United States of America, plaintiff, for an order enlarging the time in which to file for approval its statement of evidence to be incorporated in the record on appeal, as provided for in Equity Rule No. 75, up to and including the 1st day of September, A. D. 1920:

IT IS HEREBY ORDERED that the time in which the United States of America may file for approval its statement of the evidencee to be incorporated in the record on appeal as provided for in Equity Rule No. 75, in the above-entitled causes be and the same is hereby enlarged and extended up to and including the 1st day of September, A. D. 1920.

Dated this 22d day of May, 1920.

WM. C. VAN FLEET,

United States District Judge for the Northern District of California.

[Endorsed]: Filed May 22, 1920. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [1171]

In the District Court of the United States for the Northern District of California, Second Division.

IN EQUITY—No. 15,077.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

EDWARD L. COOKSEY, CHARLES E. GREGORY, CURTIS, COLLINS & HOLBROOK COMPANY, a Corporation, et al.,

Defendants.

Notice of Election by United States as to Printing of Record.

The United States of America having appealed from the decree of said Court entered against the plaintiff, to the United States Circuit Court of Appeals for the Ninth Circuit, hereby gives notice that it elects to take and file in the said Appellate Court, to be printed under the supervision of its clerk, under its rules, a duly authenticated transcript of such portion of the record as may be duly settled and indicated under Rule 75 of the "Rules and Practice for the Courts of Equity of the United States."

Dated this 20th day of July, A. D. 1920.

_____,

United States Attorney.

S. W. WILLIAMS,

Special Assistant to the Attorney General,

Solicitors for the Plaintiff. [1172]

Received a copy of the above and foregoing notice this 20th day of July, A. D. 1920.

CHARLES A. SHURTLEFF,
J. D. DE FOREST,
Solicitors for the Defendants.

[Endorsed]: Filed Jul. 20, 1920. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [1173]

In the District Court of the United States for the Northern District of California, Second Division.

IN EQUITY—No. 15,077.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

EDWARD L. COOKSEY et al.,
Defendants.

Praecipe for Transcript of Record on Appeal.

To WALTER B. MALING, Clerk of the Above-entitled Court:

Please prepare and duly authenticate for the appeal of the plaintiff, United States of America, to the United States Circuit Court of Appeals for the Ninth Circuit from the decree made and entered in the above-entitled cause on April 13, 1917, a transcript incorporating the following portions of the record therein, and none other:

1. Bill of complaint.

2. Answer of Curtis, Collins & Holbrook Company, filed January 31, 1911.

3. Answer of Edward L. Cooksey, filed February 25, 1911.

4. Replication to answer of Cooksey, filed April 3, 1911.

5. Replication to answer of Curtis, Collins & Holbrook Company, filed April 3, 1911.

6. Order filed May 1, 1911, referring cause to master in chancery to report, etc.

7. Order of November 7, 1912, consolidating this cause with others for the taking of testimony and final hearing.

8. Amendment to bill of complaint, filed April 5, 1913. [1174]

9. Answer of Curtis, Collins & Holbrook Company to amendment to bill of complaint.

10. Answer of Cooksey to amendment to bill of complaint.

11. Master's report, filed February 21, 1914.

12. Plaintiff's objections and exceptions to Master's report.

13. Stipulation and order of March 10, 1914, that exceptions before the Master shall stand as exceptions before the Court.

14. Memorandum of opinion filed by the Court January 19, 1917.

15. Order overruling plaintiff's exceptions to Master's report, confirming the report, and directing a decree to be entered in conformity therewith.

16. Decree entered April 13, 1917.

17. Petition of United States of America for appeal.

18. Order allowing appeal.

19. Assignment of errors filed by United States of America.

20. Citation issued on appeal showing service.

21. Statement of evidence to be incorporated in the record on appeal.

22. All orders and stipulations enlarging time in which the statement of evidence to be incorporated in the record on appeal shall be filed.

23. Notice of election as to printing of record.

24. This praecipe.

(Sgd.) S. W. WILLIAMS,
Special Assistant to the Attorney General,
Solicitor for Plaintiff.

Service of a copy of the foregoing praecipe is hereby acknowledged this 20th day of July, 1920.

(Sgd.) J. G. DE FOREST and
(Sgd.) CHARLES A. SHURTLEFF,
Solicitors for the Defendants.

[Endorsed]: Filed Jul. 20, 1920. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [1175]

In the Southern Division of the United States District Court, in and for the Northern District of California, Second Division.

No. 15,077—IN EQUITY.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

EDWARD L. COOKSEY et al.,

Defendants.

Certificate of Clerk U. S. District Court to Transcript on Appeal.

I, Walter B. Maling, Clerk of the District Court of the United States, in and for the Northern District of California, do hereby certify the foregoing eleven hundred and seventy-five (1175) pages, numbered from 1 to 1175, inclusive, to be full, true and correct copies of the records and proceedings as enumerated in the praecipe for transcript of record, as the same remain on file and of record in the above-entitled cause, and that the same constitute the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that the cost of the foregoing transcript of record is $503.15; that said amount will be charged by me in my quarterly account against the United States for the quarter ending September 30, 1920, and that the original citation on appeal issued in said cause is hereto annexed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court this 2d day of September, A. D. 1920.

[Seal] WALTER B. MALING,
Clerk United States District Court for the Northern District of California. [1176]

Citation on Appeal.

UNITED STATES OF AMERICA—ss.

The President of the United States, to Edward L. Cooksey, Charles E. Gregory, Curtis, Collins & Holbrook Company, a Corporation, et al., GREETING:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the city of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to an order allowing an appeal, of record in the Clerk's office of the United States District Court for the Northern District of California, wherein the United States of America is appellant, and you are appellees, to show cause, if any there be, why the decree rendered against the said appellant, as in the said order allowing appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable WILLIAM C. VAN FLEET, United States District Judge for the

Northern District of California, this 11th day of October, A. D. 1917.

WM. C. VAN FLEET,
United States District Judge. [1177]

Received copy of within citation on October 13, 1917.

CHARLES A. SHURTLEFF.
J. G. DE FOREST.

[Endorsed]: No. 15,077. United States District Court for the Northern District of California. United States of America, Appellant, vs. Edward L. Cooksey et al. Citation on Appeal. Filed Oct. 13, 1917. Walter B. Maling, Clerk.

[Endorsed]: No. 3551. United States Circuit Court of Appeals for the Ninth Circuit. The United States of America, Appellant, vs. Edward L. Cooksey, Charles E. Gregory, Curtis, Collins & Holbrook Company, a Corporation, Appellees. Transcript of Record. Upon Appeal from the Southern Division of the United States District Court for the Northern District of California, Second Division.

Filed September 2, 1920.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

In the Circuit Court of Appeals in and for the Ninth Circuit.

UNITED STATES OF AMERICA,
Appellant,

vs.

EDWARD L. COOKSEY, CHARLES HOLBROOK, CURTIS, COLLINS and HOLBROOK COMPANY, a Corporation Being Number 15,077 and 23 Similar Cases Being Numbered in the District Court Clerk's Office, as Follows: Nos. 15,078, 15,091, 15,097, 15,099, 15,105, 15,108, 15,109, 15,112, 15,113, 15,135, 15,163, 15,164, 15,168, 15,174, 15,180, 15,181, 15,186, 15,187, 15,188, 15,190, 15,195, 15,196, 15,189.

Order Extending Time to and Including December 11, 1917, to File Record and Docket Cause.

Upon application of Mr. Edward F. Jared, Assistant United States Attorney, and counsel for the appellant, and good cause therefor appearing,

It is ORDERED that the time to file transcripts of record and docket the above-entitled causes in the United States Circuit Court of Appeals be and hereby is extended to and including the eleventh day of December, 1917.

Dated San Francisco, November 9, 1917.

WM. C. VAN FLEET,
United States District Judge for the Northern District of California.

[Endorsed]: No. 3551. In the Circuit Court of Appeals, for the Ninth Circuit. United States of America, Appellant, vs. Cooksey et al., Appellees. Filed Nov. 9, 1917. F. D. Monckton, Clerk. Re-filed Sep. 2, 1920. F. D. Monckton, Clerk.

In the United States Circuit Court of Appeals, for the Ninth Circuit.

UNITED STATES OF AMERICA,
Appellant,

vs.

EDWARD L. COOKSEY, CHARLES HOLBROOK, CURTIS, COLLINS and HOLBROOK COMPANY, a Corporation Being Number 15,077 and 23 Similar Cases Being Numbered in the District Court Clerk's Office, as Follows: Nos. 15,078, 15,091, 15,097, 15,099, 15,105, 15,108, 15,109, 15,112, 15,113, 15,135, 15,163, 15,164, 15,168, 15,174, 15,180, 15,181, 15,186, 15,187, 15,188, 15,190, 15,195, 15,196, 15,189.

Order Extending Time to and Including January 10, 1918, to File Record and Docket Cause.

Upon the application of Mr. Edward F. Jared, Assistant United States Attorney, and counsel for the appellant, and good cause therefor appearing, it is

ORDERED that the time to file transcripts of record and docket the above-entitled causes in the

United States Circuit Court of Appeals be, and hereby is extended to and including the tenth day of January, 1918.

Dated San Francisco, December 11th, 1917.

WM. C. VAN FLEET,

United States District Judge for the Northern District of California.

[Endorsed]: No. 3551. United States Circuit Court of Appeals for the Ninth Circuit. United States of America vs. Edward L. Cooksey et al. Order Extending Time to File Record. Filed Dec. 11, 1917. F. D. Monckton, Clerk.

In the United States Circuit Court of Appeals, for the Ninth Circuit.

UNITED STATES OF AMERICA,

Appellant,

vs.

EDWARD L. COOKSEY, CHARLES HOLBROOK, CURTIS, COLLINS and HOLBROOK COMPANY, a Corporation Being Numbered 15,077 and 23 Similar Cases Being Numbered in the District Court Clerk's Office, as Follows: Nos. 15,078, 15,091, 15,097, 15,099, 15,105, 15,108, 15,109, 15,112, 15,113, 15,135, 15,163, 15,164, 15,168, 15,174, 15,180, 15,181, 15,186, 15,187, 15,188, 15,190, 15,195, 15,196, 15,189.

Order Extending Time to and Including February 11, 1918, to File Record and Docket Cause.

Upon application of Mr. Edward F. Jared, Assistant United States Attorney, and counsel for the appellant, and good cause therefor appearing,

IT IS ORDERED that the time to file transcripts of record and docket the above-entitled causes in the United States Circuit Court of Appeals be, and hereby is extended to and including the eleventh day of February, 1918.

Dated San Francisco, January 9, 1918.

WM. C. VAN FLEET,
United States District Judge for the Northern District of California.

[Endorsed]: No. 3551. In the United States Circuit Court of Appeals for the Ninth Circuit. United States of America vs. Edward L. Cooksey et al. Order Extending Time to File Record. Filed Jan. 9, 1918. F. D. Monckton. Re-filed Sep. 2, 1920. F. D. Monckton, Clerk.

In the Circuit Court of Appeals in and for the Ninth Circuit.

UNITED STATES OF AMERICA,
Appellant,

vs.

EDWARD L. COOKSEY, Number 15,077 and 23 Similar Cases.

Order Extending Time to and Including March 11, 1918, to File Record and Docket Cause.

Upon application of Mr. Edward F. Jared, Assistant United States Attorney, and counsel for the appellant, and good cause therefor appearing,

It is ORDERED that the time to file transcripts of record and docket the above-entitled causes in the United States Circuit Court of Appeals be, and hereby is extended to and including the eleventh day of March, 1918.

Dated San Francisco, February 11, 1918.

WM. C. VAN FLEET,
United States District Judge for the Northern District of California.

[Endorsed]: No. 3551. In the Circuit Court of Appeals, for the Ninth Circuit. United States of America vs. Edward L. Cooksey and 23 Other Similar Cases. Order Extending Time to File Record. Filed Feb. 11, 1918. F. D. Monckton, Clerk.

In the United States Circuit Court of Appeals, for the Ninth Circuit.

UNITED STATES OF AMERICA,
Appellant,

vs.

EDWARD L. COOKSEY, No. 15,077, and 23 Similar Cases.

Order Extending Time to and Including April 11, 1918, to File Record and Docket Cause.

Upon application of Mr. Edward F. Jared, Assistant United States Attorney for the Northern District of California, counsel for the appellant, and good cause therefor appearing, it is

ORDERED that the time to file transcripts of record and docket the above-entitled causes in the United States Circuit Court of Appeals be, and hereby is extended to and including the eleventh day of April, 1918.

Dated San Francisco, Cal., March 9th, 1918.

WM. C. VAN FLEET,

United States District Judge for the Northern District of California.

[Endorsed]: No. 3551. In the United States Circuit Court of Appeals for the Ninth Circuit. United States of America, Appellant, vs. Edward L. Cooksey, No. 15,077 and 23 Similar Cases. Order Extending Time to File Record. Filed Mar. 9, 1918. F. D. Monckton, Clerk. Re-filed Sep. 2, 1920. F. D. Monckton, Clerk.

In the United States Circuit Court of Appeals, for the Ninth Circuit.

UNITED STATES OF AMERICA,

Appellant,

vs.

EDWARD L. COOKSEY, CHARLES HOLBROOK, CURTIS, COLLINS and HOLBROOK COMPANY, a Corporation Being Number 15,077 and 23 Similar Cases Being Numbered in the District Court Clerk's Office, as Follows: Nos. 15,078, 15,091, 15,097, 15,099, 15,105, 15,108, 15,109, 15,112, 15,113, 15,135, 15,163, 15,164, 15,168, 15,174, 15,180, 15,181, 15,186, 15,187, 15,188, 15,190, 15,195, 15,196, 15,189.

Order Extending Time to and Including May 10, 1918, to File Record and Docket Cause.

Upon application of Mr. Edward F. Jared, Assistant United States Attorney, and counsel for the appellant, and good cause therefor appearing, it is

ORDERED that the time to file transcripts of record and docket the above-entitled causes in the United States Circuit Court of Appeals be, and hereby is extended to and including the tenth day of May, 1918.

Dated San Francisco, April, 9, 1918.

WM. C. VAN FLEET,

United States District Judge for the Northern District of California.

[Endorsed]: No. 3551. In the Circuit Court of the United States for the 9th Circuit. United States of America vs. Edward L. Cooksey et al. Order Extending Time to File Record. Filed Apr. 9, 1918. F. D. Monckton, Clerk. Re-filed Sep. 2, 1920. F. D. Monckton, Clerk.

In the United States Circuit Court of Appeals for the Ninth Circuit.

UNITED STATES OF AMERICA,

Appellant,

vs.

EDWARD L. COOKSEY, CHARLES HOLBROOK, CURTIS, COLLINS and HOLBROOK COMPANY, a Corporation, Being Number 15,077 and 23 Similar Cases Being Numbered in the District Court Clerk's Office, as follows: Nos. 15,078, 15,091, 15,097, 15,099, 15,105, 15,108, 15,109, 15,112, 15,113, 15,135, 15,163, 15,164, 15,168, 15,174, 15,180, 15,181, 15,186, 15,187, 15,188, 15,190, 15,195, 15,196, 15,189.

Order Extending Time to and Including June 10, 1918, to File Record and Docket Cause.

Upon application of Mr. Edward F. Jared, Assistant United States Attorney, and counsel for the Appellant, and good cause therefor appearing it is

ORDERED that the time to file transcripts of record and docket the above-entitled causes in the United States Circuit Court of Appeals be, and

hereby is extended to and including the tenth day of June, 1918.

Dated at San Francisco, May 1st, 1918.

WM. C. VAN FLEET,

United States District Judge for the Northern District of California.

[Endorsed]: No. 3551. United States Circuit Court of Appeals for the Ninth Circuit. United States of America vs. Edward L. Cooksey et al. Order Under Rule 16 Enlarging Time to June 10, 1918, to File Record Thereof and to Docket Case. Filed May 1, 1918. F. D. Monckton, Clerk. Refiled Sep. 2, 1920. F. D. Monckton, Clerk.

In the United States Circuit Court of Appeals for the Ninth Circuit.

UNITED STATES OF AMERICA,

Appellant,

vs.

EDWARD L. COOKSEY, CHARLES HOLBROOK, CURTIS, COLLINS and HOLBROOK COMPANY, a Corporation, Being Number 15,077 and 23 Similar Cases Being Numbered in the District Court Clerk's Office, as follows: Nos. 15,078, 15,091, 15,097, 15,099, 15,105, 15,108, 15,109, 15,112, 15,113, 15,135, 15,163, 15,164, 15,168, 15,174, 15,180, 15,181, 15,186, 15,187, 15,188, 15,190, 15,195, 15,196, 15,189.

Order Extending Time to and Including July 10, 1918, to File Record and Docket Cause.

Upon application of Mr. Edward F. Jared, Assistant United States Attorney, and counsel for the Appellant, and good cause therefor appearing it is

ORDERED that the time to file transcripts of record and docket the above-entitled causes in the United States Circuit Court of Appeals be, and hereby is extended to and including the tenth day of July, 1918.

Dated San Francisco, June 11, 1918.

WM. H. HUNT,
United States Circuit Judge for the Ninth Circuit.

[Endorsed]: No. 3551. In the Circuit Court of Appeals for the Ninth Circuit. United States of America vs. Edward Cooksey et al. Order Extending Time to File Record to July 10, 1918. Filed Jun. 10, 1918. F. D. Monckton, Clerk. Re-filed Sep. 2, 1920. F. D. Monckton, Clerk.

In the United States Circuit Court of Appeals for the Ninth Circuit.

UNITED STATES OF AMERICA,
Appellant,

vs.

EDWARD L. COOKSEY, CHARLES HOLBROOK, CURTIS, COLLINS and HOLBROOK COMPANY, a Corporation, Being Number 15,077, and 23 Similar Cases Being Numbered in the District Court Clerk's Office, as follows: Nos. 15,078, 15,091, 15,097, 15,099, 15,105, 15,108, 15,109, 15,112, 15,113, 15,135, 15,163, 15,164, 15,168, 15,174, 15,180, 15,181, 15,186, 15,187, 15,188, 15,190, 15,195, 15,196, 15,189.

Order Extending Time to and Including August 10, 1918, to File Record and Docket Cause.

Upon application of Mr. Edward F. Jared, Assistant United States Attorney, and counsel for the Appellant, and good cause therefor appearing it is

ORDERED that the time to file transcripts of record and docket the above-entitled causes in the United States Circuit Court of Appeals be, and hereby is extended to and including the tenth day of August, 1918.

Dated San Francisco, Cal., July 10, 1918.

WM. H. HUNT,

Judge of the Circuit Court of Appeals for the Ninth Circuit.

[Endorsed]: No. 3551. In the United States Circuit Court of Appeals for the Ninth Circuit. United States of America vs. Edward L. Cooksey et al. Order Extending Time to File Record. Filed Jul. 10, 1918. F. D. Monckton, Clerk. Refiled Sep. 2, 1920. F. D. Monckton, Clerk.

In the United States Circuit Court of Appeals for the Ninth Circuit.

UNITED STATES OF AMERICA,

Appellant,

vs.

EDWARD L. COOKSEY, CHARLES HOLBROOK, CURTIS, COLLINS and HOLBROOK COMPANY, a Corporation, Being Number 15,077, and 23 Similar Cases Being Numbered in the District Court Clerk's Office, as follows: Nos. 15,078, 15,091, 15,097, 15,099, 15,105, 15,108, 15,109, 15,112, 15,113, 15,135, 15,163, 15,164, 15,168, 15,174, 15,180, 15,181, 15,186, 15,187, 15,188, 15,190, 15,195, 15,196, 15,189.

Order Extending Time to and Including September 10, 1918, to File Record and Docket Cause.

Upon application of Annette Abbott Adams, United States Attorney, and counsel for the appellant, and good cause therefor appearing, it is

ORDERED that the time to file transcripts of record and docket the above-entitled causes in the United States Circuit Court of Appeals be, and

hereby is extended to and including the tenth day of September, 1918.

Dated San Francisco, August 10th, 1918.

WM. W. MORROW,

United States Circuit Judge for the Ninth Circuit.

[Endorsed]: No. 3551. In the United States Circuit Court of Appeals, for the Ninth Circuit. United States of America vs. Edward L. Cooksey, Charles Holbrook, Curtis, Collins and Holbrook Company, a Corporation, Being Number 15,077, and 23 Similar Cases Being Numbered in the District Court Clerk's Office, as follows: Nos. 15,078, 15,091, 15,097, 15,099, 15,105, 15,108, 15,109, 15,112, 15,113, 15,135, 15,163, 15,164, 15,168, 15,174, 15,180, 15,181, 15,186, 15,187, 15,188, 15,190, 15,195, 15,196, 15,189. Order Extending Time to File Record. Filed Aug. 9, 1918. F. D. Monckton, Clerk. Re-filed Sep. 2, 1920. F. D. Monckton, Clerk.

In the United States Circuit Court of Appeals for the Ninth Circuit.

UNITED STATES OF AMERICA,

Appellant,

vs.

EDWARD L. COOKSEY, CHARLES HOLBROOK, CURTIS, COLLINS and HOLBROOK COMPANY, a Corporation, Being Number 15,077, and 23 Similar Cases Being Numbered in the District Court Clerk's

Office, as follows: Nos. 15,078, 15,091, 15,097, 15,099, 15,105, 15,108, 15,109, 15,112, 15,113, 15,135, 15,163, 15,164, 15,168, 15,174, 15,180, 15,181, 15,186, 15,187, 15,188, 15,190, 15,195, 15,196, 15,189,

Appellees.

Order Extending Time to and Including October 10, 1918, to File Record and Docket Cause.

Upon application of Annette Abbott Adams, United States Attorney, and counsel for the appellant and good cause therefor appearing, it is

ORDERED that the time to file transcripts of record and docket the above-entitled causes in the United States Circuit Court of Appeals be, and hereby is extended to and including the tenth day of October, 1918.

Dated San Francisco, Cal., September 10, 1918.

WM. H. HUNT,

United States Circuit Judge for the Ninth Circuit.

[Endorsed]: No. 3551. In the United States Circuit Court of Appeals, for the Ninth Circuit. United States of America vs. Edward L. Cooksey et al. Order Extending Time to File Record to October 10, 1918. Filed Sep. 10, 1918. Re-filed Sep. 2, 1920. F. D. Monckton, Clerk.

In the United States Circuit Court of Appeals for the Ninth Circuit.

UNITED STATES OF AMERICA,

Appellant,

vs.

EDWARD L. COOKSEY, CHARLES HOLBROOK, CURTIS, COLLINS and HOLBROOK COMPANY, a Corporation, Being Number 15,077 and 23 Similar Cases Being Numbered in the District Court Clerk's Office, as follows: Nos. 15,078, 15,091, 15,097, 15,099, 15,105, 15,108, 15,109, 15,112, 15,113, 15,135, 15,163, 15,164, 15,168, 15,174, 15,180, 15,181, 15,186, 15,187, 15,188, 15,190, 15,195, 15,196, 15,189,

Appellees.

Order Extending Time to and Including November 10, 1918, to File Record and Docket Cause.

Upon application of Annette Abbott Adams, United States Attorney, and counsel for the appellant, and good cause therefor appearing, it is

ORDERED that the time to file transcripts of record and docket the above-entitled causes in the United States Circuit Court of Appeals be, and hereby is extended to and including the tenth day of November, 1918.

Dated San Francisco, Cal., October 10, 1918.

WM. B. GILBERT,

United States Circuit Judge for the Ninth Circuit.

[Endorsed]: No. 3551. In the Southern Division of the District Court of the United States for the Northern District of California, First Division. United States of America vs. Edward L. Cooksey, Charles Holbrook, Curtis, Collins and Holbrook Company. Order Extending Time to File Record. Filed Oct. 10, 1918. F. D. Monckton, Clerk. Refiled Sep. 2, 1920. F. D. Monckton, Clerk.

In the United States Circuit Court of Appeals for the Ninth Circuit.

UNITED STATES OF AMERICA,

Appellant,

vs.

EDWARD L. COOKSEY, CHARLES HOLBROOK, CURTIS, COLLINS and HOLBROOK COMPANY, a Corporation, Being Number 15,077, and 23 Similar Cases Being Numbered in the District Court Clerk's Office, as follows: Nos. 15,078, 15,091, 15,097, 15,099, 15,105, 15,108, 15,109, 15,112, 15,113, 15,135, 15,163, 15,164, 15,168, 15,174, 15,180, 15,181, 15,186, 15,187, 15,188, 15,190, 15,195, 15,196, 15,189,

Appellees.

Order Extending Time to and Including December 10, 1918, to File Record and Docket Cause.

Upon application of Annette Abbott Adams, United States Attorney, and counsel for the appellant, and good cause therefor appearing, it is

ORDERED that the time to file transcripts of record and docket the above-entitled causes in the United States Circuit Court of Appeals be, and hereby is extended to and including the tenth day of December, 1918.

Dated San Francisco, Cal., November 10, 1918.

HUNT,

United States Circuit Judge for the Ninth Circuit.

[Endorsed]: No. 3551. In the United States Circuit Court of Appeals for the Ninth Circuit. United States of America, Appellant, vs. Edward L. Cooksey, Charles Holbrook, Curtis Collins and Holbrook Company. Order Extending Time to File Record. Filed Nov. 11, 1918. F. D. Monckton, Clerk. Re-filed Sep. 2, 1920. F. D. Monckton, Clerk.

In the United States Circuit Court of Appeals for the Ninth Circuit.

UNITED STATES OF AMERICA,

Appellant,

vs.

EDWARD L. COOKSEY, CHARLES HOLBROOK, CURTIS, COLLINS and HOLBROOK COMPANY, a Corporation, Being Number 15,077 and 23 Similar Cases Being Numbered in the District Court Clerk's Office, as follows: Nos. 15,078, 15,091, 15,097, 15,099, 15,105, 15,108, 15,109, 15,112, 15,113,

15,135, 15,163, 15,164, 15,168, 15,174, 15,180, 15,181, 15,186, 15,187, 15,188, 15,190, 15,195, 15,196, 15,189,

Appellees.

Order Extending Time to and Including January 10, 1919, to File Record and Docket Cause.

Upon application of Annette Abbott Adams, United States Attorney, and counsel for the appellant, and good cause therefor appearing, it is

ORDERED that the time to file transcripts of record and docket the above-entitled causes in the United States Circuit Court of Appeals be, and hereby is extended to and including the tenth day of January, 1919.

Dated San Francisco, Cal., December 10, 1918.

HUNT,

United States Circuit Judge for the Ninth Circuit.

[Endorsed]: No. 3551. In the United States Circuit Court of Appeals for the Ninth Circuit. Edward L. Cooksey et al. vs. U. S. A. Order Extending Time to File Record. Filed Dec. 11, 1918. F. D. Monckton, Clerk. Refiled Sep. 2, 1920. F. D. Monckton, Clerk.

In the United States Circuit Court of Appeals for the Ninth Circuit.

UNITED STATES OF AMERICA,

Appellant,

vs.

EDWARD L. COOKSEY, CHARLES HOLBROOK, CURTIS, COLLINS and HOLBROOK COMPANY, a Corporation, Being Number 15,077 and 23 Similar Cases Being Numbered in the District Court Clerk's Office, as follows: Nos. 15,078, 15,091, 15,097, 15,099, 15,163, 15,164, 15,168, 15,174, 15,105, 15,108, 15,109, 15,180, 15,181, 15,186, 15,187, 15,188, 15,112, 15,113, 15,135, 15,190, 15,195, 15,196, 15,189,

Appellees.

Order Extending Time to and Including February 10, 1919, to File Record and Docket Cause.

Upon application of Annette Abbott Adams, United States Attorney, and counsel for the appellant, and good cause therefor appearing, it is

ORDERED that the time to file transcripts of record and docket the above-entitled causes in the United States Circuit Court of Appeals be, and hereby is extended to and including the tenth day of February, 1919.

Dated San Francisco, Cal., January 10, 1919.

W. H. HUNT,

United States Circuit Judge for the Ninth Circuit.

[Endorsed]: No. 3551. In the United States Circuit Court of Appeals for the Ninth Circuit. United States of America vs. Edward L. Cooksey, Chas. Holbrook et al. Order Extending Time to File Record. Filed Jan. 10, 1919. F. D. Monckton, Clerk. Re-filed Sep. 2, 1920. F. D. Monckton, Clerk.

In the United States Circuit Court of Appeals for the Ninth Circuit.

UNITED STATES OF AMERICA,

Appellant,

vs.

EDWARD L. COOKSEY, CHARLES HOLBROOK, CURTIS, COLLINS and HOLBROOK COMPANY, a Corporation, Being Number 15,077 and 23 Similar Cases Being Numbered in the District Court Clerk's Office, as follows: Nos. 15,078, 15,091, 15,097, 15,099, 15,163, 15,164, 15,168, 15,174, 15,105, 15,108, 15,109, 15,180, 15,181, 15,186, 15,187, 15,188, 15,112, 15,113, 15,135, 15,190, 15,195, 15,196, 15,189,

Appellees.

Order Extending Time to and Including March 10, 1919, to File Record and Docket Cause.

Upon application of Annette Abbott Adams, United States Attorney, and counsel for the appellant, and good cause therefor appearing, it is

ORDERED that the time to file transcripts of record and docket the above-entitled causes in the United States Circuit Court of Appeals be, and hereby is extended to and including the tenth day of March, 1919.

Dated San Francisco, Cal., February 10, 1919.

W. H. HUNT,

United States Circuit Judge for the Ninth Circuit.

[Endorsed]: No. 3551. In the United States Circuit Court of Appeals for the Ninth Circuit. United States of America vs. Edward L. Cooksey et al. Order Extending Time to File Record. Filed Feb. 10, 1919. F. D. Monckton, Clerk. Refiled Sep. 2, 1920. F. D. Monckton, Clerk.

In the United States Circuit Court of Appeals for the Ninth Circuit.

UNITED STATES OF AMERICA,

Appellant,

vs.

EDWARD L. COOKSEY, CHARLES HOLBROOK, CURTIS, COLLINS and HOLBROOK COMPANY, a Corporation, Being Number 15,077 and 23 Similar Cases Being Numbered in the District Court Clerk's Office, as follows: Nos. 15,078, 15,091, 15,097, 15,099, 15,163, 15,164, 15,168, 15,174, 15,105, 15,108, 15,109, 15,180, 15,181, 15,186, 15,187, 15,188, 15,112, 15,113, 15,135, 15,190, 15,195, 15,196, 15,189,

Appellees.

Order Extending Time to and Including April 10, 1919, to File Record and Docket Cause.

Upon application of Annette Abbott Adams, United States Attorneyy, and counsel for the appellant, and good cause appearing therefor, it is hereby

ORDERED that the time to file transcripts of record and docket the above-entitled causes in the United States Circuit Court of Appeals be, and hereby is extended up to and including the tenth day of April, 1919.

Dated San Francisco, Calif., March 10, 1919.

W. H. HUNT,

United States Circuit Judge for the Ninth Circuit.

[Endorsed]: No. 3551. In the United States Circuit Court of Appeals for the Ninth Circuit. United States of America vs. Edward L. Cooksey et al. Order Extending Time to File Record. Filed Mar. 10, 1919. F. D. Monckton, Clerk. Refiled Sep. 2, 1920. F. D. Monckton, Clerk.

In the United States Circuit Court of Appeals for the Ninth Circuit.

UNITED STATES OF AMERICA,

Appellant,

vs.

EDWARD L. COOKSEY, CHARLES HOLBROOK, CURTIS, COLLINS & HOLBROOK COMPANY, a Corporation, Being Number 15,077, and 23 Similar Cases Being Numbered in the District Court Clerk's Office as follows: Nos. 15,078, 15,091, 15,097, 15,099, 15,163, 15,164, 15,168, 15,174, 15,105, 15,108, 15,109, 15,180, 15,181, 15,186, 15,187, 15,188, 15,112, 15,113, 15,135, 15,190, 15,195, 15,196, 15,189,

Appellees.

Order Extending Time to and Including May 10, 1919, to File Record and Docket Cause.

Upon application of Annette Abbott Adams, United States Attorney, and counsel for the appellant, and good cause therefor appearing, it is

ORDERED that the time to file transcripts of record and docket the above-entitled causes in the United States Circuit Court of Appeals be, and hereby is extended to and including the tenth day of May, 1919.

Dated San Francisco, Cal., April 10, 1919.

W. H. HUNT,

United States Circuit Judge for the Ninth Circuit.

[Endorsed]: No. 3551. In the United States Circuit Court of Appeals for the Ninth Circuit. United States of America, Appellant, vs. Edward L. Cooksey et al., Appellees. Order Extending Time to File Records. Filed Apr. 16, 1919. F. D. Monckton, Clerk. Re-filed Sep. 2, 1920. F. D. Monckton, Clerk.

In the United States Circuit Court of Appeals for the Ninth Circuit.

UNITED STATES OF AMERICA,

Appellant,

vs.

EDWARD L. COOKSEY, CHARLES HOLBROOK, CURTIS, COLLINS and HOLBROOK COMPANY, a Corporation, being Number 15,077, and 23 Similar Cases Being Numbered in the District Court Clerk's Office, as Follows: Nos. 15,078, 15,091, 15,097, 15,099, 15,163, 15,164, 15,168, 15,174, 15,105, 15,108, 15,109, 15,180, 15,181, 15,186, 15,187, 15,188, 15,112, 15,113, 15,135, 15,190, 15,195, 15,196, 15,189,

Appellees.

Order Extending Time to and Including June 10, 1919, to File Record and Docket Cause.

Upon application of Annette Abbott Adams, United States Attorney, and counsel for the appellant, and good cause appearing therefor, it is

ORDERED that the time to file transcripts of record and docket the above-entitled causes in the

United States Circuit Court of Appeals be, and hereby is extended to and including the tenth day of June, 1919.

Dated at San Francisco, Cal., May 10, 1919.

HUNT,

United States Circuit Judge for the Ninth Circuit.

[Endorsed]: No. 3551. In the United States Circuit Court of Appeals for the Ninth Circuit. United States of America vs. Edward L. Cooksey et al. Order Extending Time to File Record. Filed May 12, 1919. F. D. Monckton, Clerk. Re-filed Sep. 2, 1920. F. D. Monckton, Clerk.

In the United States Circuit Court of Appeals for the Ninth Circuit.

UNITED STATES OF AMERICA,

Appellant,

vs.

EDWARD L. COOKSEY, CHARLES HOLBROOK, CURTIS, COLLINS and HOLBROOK COMPANY, a Corporation, being Number 15,077, and 23 Similar Cases Being Numbered in the District Court Clerk's Office, as Follows: Nos. 15,078, 15,091, 15,097, 15,099, 15,163, 15,164, 15,168, 15,174, 15,105, 15,108, 15,109, 15,180, 15,181, 15,186, 15,187, 15,188, 15,112, 15,113, 15,135, 15,190, 15,195, 15,196, 15,189,

Appellees.

Order Extending Time to and Including August 10, 1919, to File Record and Docket Cause.

These causes coming on to be heard upon the application of the United States of America, plaintiff and appellant, for an enlargement of the return of the citation on appeal to the United States Circuit Court of Appeals for the Ninth Circuit, and the time in which to file transcripts of record and docket the above-entitled causes up to and including the 10th day of August, A. D. 1919:

IT IS HEREBY ORDERED that the return day of the citation on appeal to the United States Circuit Court of Appeals for the Ninth Circuit and the time in which to file transcripts of record and docket the above-entitled causes, be and the same is hereby enlarged and extended up to and including the 10th day of August, A. D. 1919.

Dated this 6th day June, A. D. 1919.

W. H. HUNT,
Circuit Judge.

[Endorsed]: No. 3551. In the Circuit Court of the United States for the Ninth Circuit. United States of America vs. Edward L. Cooksey et al. Order Extending Time to File Record. Filed Jun. 6, 1919. F. D. Monckton, Clerk. Re-filed Sep. 2, 1920. F. D. Monckton, Clerk.

In the United States Circuit Court of Appeals for the Ninth Circuit.

UNITED STATES OF AMERICA,
Appellant,

vs.

EDWARD L. COOKSEY, CHARLES HOLBROOK, CURTIS, COLLINS AND HOLBROOK COMPANY, a Corporation, Being Numbered 15,077, and 23 Similar Cases Being Numbered in the District Court Clerk's Office as follows: Nos. 15,078, 15,097, 15,099, 15,163, 15,164, 15,168, 15,174, 15,105, 15,108, 15,109, 15,180, 15,181, 15,186, 15,187, 15,188, 15,112, 15,113, 15,135, 15, 190, 15,195, 15,196, 15,189,
Appellees.

Order Extending Time to and Including October 10, 1919, to File Record and Docket Cause.

These causes coming on to be heard upon the application of the United States of America, plaintiff and appellant, for an enlargement of the return of the citation on appeal to the United States Circuit Court of Appeals for the Ninth Circuit, and the time in which to file transcripts of record and docket the above-entitled causes up to and including the 10th day of October, 1919:

IT IS HEREBY ORDERED that the return day of the citation on appeal to the United States Circuit Court of Appeals for the Ninth Circuit and the time in which to file transcripts of record and docket the above-entitled causes, be and the same is hereby

enlarged and extended up to and including the 10th day of October, A. D. 1919, without prejudice to defendant's objection that the time has expired in which such an order can be made.

Dated this 11th day of August, 1919.

WM. C. VAN FLEET,
Judge.

[Endorsed]: No. 3551. In the Circuit Court of the United States for the Ninth Circuit. United States of America vs. Edward L. Cooksey et al. Order Extending Time to File Record. Filed Aug. 11, 1919. F. D. Monckton, Clerk. Re-filed Sep. 2, 1920. F. D. Monckton, Clerk.

In the United States Circuit Court of Appeals for the Ninth Circuit.

UNITED STATES OF AMERICA,
Appellant,

vs.

EDWARD L. COOKSEY, CHARLES HOLBROOK, CURTIS, COLLINS AND HOLBROOK COMPANY, a Corporation, Being Number 15,077, and 23 Similar Cases Being Numbered in the District Court Clerk's Office as follows: Nos. 15,078, 15,091, 15,097, 15,099, 15,163, 15,164, 15,168, 15,174, 15,105, 15,108, 15,109, 15,180, 15,181, 15,186, 15,187, 15,188, 15,112, 15,113, 15,135, 15,190, 15,195, 15,196, 15,189,

Appellees.

Order Extending Time to and Including December 10, 1919, to File Record and Docket Cause.

These causes coming on to be heard upon the application of the United States of America, plaintiff and appellant, for an enlargement of the return of the citation on appeal to the United States Circuit Court of Appeals for the Ninth Circuit, and the time in which to file transcripts of record and docket the above-entitled causes up to and including the 10th day of December, A. D. 1919:

IT IS HEREBY ORDERED that the return day of the citation on appeal to the United States Circuit Court of Appeals for the Ninth Circuit and the time in which to file transcripts of record and docket the above-entitled causes, be and the same is hereby enlarged and extended up to and including the 10th day of December, A. D. 1919, without prejudice to the defendants' objection that the time has expired in which such order can be made.

Dated this 26th day of September, A. D. 1919.

WILLIAM H. HUNT,
Circuit Judge.

[Endorsed]: No. 3551. United States Circuit Court of Appeals for the Ninth Circuit. Order Under Rule 16 Enlarging Time to Dec. 10, 1919, to File Record Thereof and to Docket Case. Filed Sep. 26, 1919. F. D. Monckton, Clerk. Re-filed Sep. 2, 1920. F. D. Monckton, Clerk.

In the United States Circuit Court of Appeals for the Ninth Circuit.

UNITED STATES OF AMERICA,

Appellant,

vs.

EDWARD L. COOKSEY, CHARLES HOLBROOK, CURTIS, COLLINS AND HOLBROOK COMPANY, a Corporation, Being Number 15,077, and 23 Similar Cases Being Numbered in the District Court Clerk's Office as follows: Nos. 15,078, 15,091, 15,097, 15,099, 15,163, 15,164, 15,168, 15,174, 15,105, 15,108, 15,109, 15,180, 15,181, 15,186, 15,187, 15,188, 15,112, 15,113, 15,135, 15,190, 15,195, 15,196, 15,189,

Appellees.

Order Extending Time to and Including March 1, 1920, to File Record and Docket Cause.

These causes coming on to be heard upon the application of the United States of America, plaintiff and appellant, for an enlargement of the return of the citation on appeal to the United States Circuit Court of Appeals for the Ninth Circuit, and the time in which to file transcripts of record and docket the above-entitled causes up to and including the 1st day of March, A. D. 1920:

IT IS HEREBY ORDERED that the return day of the citation on appeal to the United States Circuit Court of Appeals for the Ninth Circuit and the time in which to file transcripts of record and docket the above-entitled causes, be and the same is

hereby enlarged and extended up to and including the 1st day of March, A. D. 1920, without prejudice to the defendant's objection that the time has expired in which such order can be made.

Dated this 5th day of December, 1919.

WM. H. HUNT,
Circuit Judge.

[Endorsed]: No. 3551. In the U. S. Circuit Court of Appeals for the Ninth Circuit. United States of America vs. Edward L. Cooksey, Charles Holbrook, Curtis, Collins and Holbrook Company, a Corporation. Order Extending Time to File Record. Filed Dec. 5, 1919. F. D. Monckton, Clerk. Refiled Sep. 2, 1920. F. D. Monckton, Clerk.

In the United States Circuit Court of Appeals for the Ninth Circuit.

UNITED STATES OF AMERICA,
Appellant,

vs.

EDWARD L. COOKSEY, CHARLES HOLBROOK, CURTIS, COLLINS and HOLBROOK COMPANY, a Corporation, Being Number 15,077, and 23 Similar Cases Being Numbered in the District Court Clerk's Office as Follows: Nos. 15,078, 15,091, 15,097, 15,099, 15,163, 15,164, 15,168, 15,174, 15,105, 15,108, 15,109, 15,180, 15,181, 15,186, 15,187, 15,188, 15,112, 15,113, 15,135, 15,190, 15,195, 15,196, 15,189,

Appellees.

Order Extending Time to and Including June 1, 1920, to File Record and Docket Cause.

These causes coming on to be heard upon the application of the United States of America, plaintiff and appellant, for an enlargement of the return of the citation on appeal to the United States Circuit Court of Appeals for the Ninth Circuit, and the time in which to file transcripts of record and docket the above-entitled causes up to and including the 1st day of June, A. D. 1920:

IT IS HEREBY ORDERED that the return day of the citation on appeal to the United States Circuit Court of Appeals for the Ninth Circuit and the time in which to file transcripts of record and docket the above-entitled causes, be and the same is hereby enlarged and extended up to and including the first day of June, A. D. 1920, without prejudice to the defendant's objection that the time has expired in which such order can be made.

Dated this 24th day of February, 1920.

WM. H. HUNT,
Circuit Judge.

[Endorsed]: No. 3551. In the Circuit Court of Appeals of the United States for the Ninth Circuit. United States of America, Appellant, vs. Edward L. Cooksey et al., Appellees. Order Extending Time to File Record. Filed Feb. 26, 1920. F. D. Monckton, Clerk. Re-filed Sep. 2, 1920. F. D. Monckton, Clerk.

In the United States Circuit Court of Appeals for the Ninth Circuit.

UNITED STATES OF AMERICA,

Appellant,

vs.

EDWARD L. COOKSEY, CHARLES HOLBROOK, CURTIS, COLLINS and HOLBROOK COMPANY, a Corporation, Being Number 15,077, and 23 Similar Cases Being Numbered in the District Court Clerk's Office as Follows: Nos. 15,078, 15,091, 15,097, 15,099, 15,163, 15,164, 15,168, 15,174, 15,105, 15,108, 15,109, 15,180, 15,181, 15,186, 15,187, 15,188, 15,112, 15,113, 15,135, 15,190, 15,195, 15,196, 15,189,

Appellees.

Order Extending Time to and Including September 1, 1920, to File Record and Docket Cause.

These causes coming on to be heard upon the application of the United States of America, plaintiff and appellant, for an enlargement of the return of the citation on appeal to the United States Circuit Court of Appeals for the Ninth Circuit, and the time in which to file transcripts of record and docket the above-entitled causes up to and including the 1st day of September, A. D. 1920:

IT IS HEREBY ORDERED that the return day of the citation on appeal to the United States Circuit Court of Appeals for the Ninth Circuit and the time in which to file transcripts of record and docket the above-entitled causes, be and the same is hereby en-

larged and extended up to and including the first day of September, A. D. 1920, without prejudice to the defendant's objection that the time has expired in which such order can be made.

Dated this 24th day of May, 1920.

WM. H. HUNT,
Circuit Judge.

[Endorsed]: No. 3551. In the United States Circuit Court of Appeals for the Ninth Circuit. United States of America, Appellant, vs. Edward L. Cooksey, Charles Holbrook, Curtis, Collins & Holbrook Company, et al., Appellees. Order Extending Time to File Record. Filed May 24, 1920. F. D. Monckton, Clerk. Re-filed Sep. 2, 1920. F. D. Monckton, Clerk.

In the United States Circuit Court of Appeals for the Ninth Circuit.

UNITED STATES OF AMERICA,
Appellant,

vs.

EDWARD L. COOKSEY, CHARLES HOLBROOK, CURTIS, COLLINS and HOLBROOK COMPANY, a Corporation, Being Number 15,077, and 23 Similar Cases Being Numbered in the District Court Clerk's Office as Follows: Nos. 15,078, 15,091, 15,097, 15,099, 15,163, 15,164, 15,168, 15,174, 15,105, 15,168, 15,109, 15,180, 15,181, 15,186, 15,187, 15,188, 15,112, 15,113, 15,135, 15,190, 15,195, 15,196, 15,189,
Appellees.

Order Extending Time to and Including October 1, 1920, to File Record and Docket Cause.

These causes coming on to be heard upon the application of the United States of America, plaintiff and appellant, for an enlargement of the return of the citation on appeal to the United States Circuit Court of Appeals for the Ninth Circuit, and the time in which to file transcripts of record and docket the above-entitled causes up to and including the 1st day of October, A. D. 1920:

IT IS HEREBY ORDERED that the return day of the citation on appeal to the United States Circuit Court of Appeals for the Ninth Circuit and the time in which to file transcripts of record and docket the above-entitled causes, be and the same is hereby enlarged and extended up to and including the first day of October, A. D. 1920, without prejudice to the defendants' objection that the time has expired in which such order can be made.

Dated this 26th day of August, 1920.

WM. H. HUNT,
Circuit Judge.

[Endorsed]: No. 3551. In the Circuit Court of the United States for the Ninth Circuit. United States of America vs. Edward L. Cooksey, Charles Holbrook, Curtis, Collins and Holbrook Company, No. 15,077, and 23 Similar Cases. Order Extending Time to File Record to October 1, 1920. Filed Aug. 26, 1920. F. D. Monckton, Clerk. Re-filed Sep. 2, 1920. F. D. Monckton, Clerk.

[Endorsed]: Printed Transcript of Record. Filed October 5, 1920. F. D. Monckton, Clerk.

No. 3551

United States

Circuit Court of Appeals

For the Ninth Circuit.

THE UNITED STATES OF AMERICA,
Appellant,

vs.

EDWARD L. COOKSEY, CHARLES E. GREGORY, CURTIS, COLLINS & HOLBROOK COMPANY, a Corporation,
Appellees.

Upon Appeal from the Southern Division of the United States District Court for the Northern District of California, Second Division.

PROCEEDINGS HAD IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

At a stated term, to wit, the October Term, A. D. 1920, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the court-room thereof, in the City and County of San Francisco, in the State of California, on Wednesday, the twenty-seventh day of October, in the year of our Lord one thousand nine hundred and twenty. Present: Honorable WILLIAM B. GILBERT, Senior Circuit Judge, Presiding; Honorable WILLIAM W. MORROW, Circuit Judge; Honorable WILLIAM H. HUNT, Circuit Judge.

No. 3551 and Nos. 3554 to and Including 3576.

THE UNITED STATES OF AMERICA,
Appellant,

vs.

EDWARD L. COOKSEY et al.,
Appellees.

Order of Submission.

ORDERED appeals in each of the above-entitled causes argued by Mr. S. W. Williams, Special Assistant to the Attorney General and counsel for the appellant, and by Mr. Charles A. Shurtleff, counsel for the appellees, and submitted to the Court for consideration and decision.

At a stated term, to wit, the October Term, A. D. 1921, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the City and County of San Francisco, in the State of California, on Monday, the third day of October, in the year of our Lord one thousand nine hundred and twenty-one. Present: Honorable WILLIAM B. GILBERT, Senior Circuit Judge, Presiding; Honorable ERSKINE M. ROSS, Circuit Judge; Honorable WILLIAM W. MORROW, Circuit Judge.

No. 3551.

THE UNITED STATES OF AMERICA,
Appellant,

vs.

EDWARD L. COOKSEY, CHARLES E. GREGORY, CURTIS, COLLINS & HOLBROOK COMPANY, a Corporation,
Appellees.

Order Directing Filing of Opinion and Filing and Recording of Decree.

By direction of the Honorable William B. Gilbert, William W. Morrow, and William H. Hunt, Circuit Judges, before whom the cause was heard, ORDERED that the typewritten opinion this day rendered by this Court in the above-entitled cause be forthwith filed by the clerk, and that a Decree be filed and recorded in the minutes of this court, in accordance with said opinion.

At a stated term, to wit, the October Term, A. D. 1921, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the City and County of San Francisco, in the State of California, on Monday, the third day of October, in the year of our Lord one thousand nine hundred and twenty-one. Present: Honorable WILLIAM B. GILBERT, Senior Circuit Judge, Presiding; Honorable ERSKINE M. ROSS, Circuit Judge; Honorable WILLIAM W. MORROW, Circuit Judge.

Nos. 3554 to and Including No. 3576.

THE UNITED STATES OF AMERICA,
Appellant,

vs.

JOHN HUNTINGTON, CHARLES E. GREGORY, CURTIS, COLLINS & HOLBROOK COMPANY et al.,
Appellees.

Order Directing Filing of Opinion and Filing and Recording of Decrees.

By direction of the Honorable William B. Gilbert, William W. Morrow, and William H. Hunt, Circuit Judges, before whom the causes were heard, ORDERED that the typewritten opinion this day rendered by this Court in the above-entitled causes be forthwith filed by the clerk, and that a Decree be filed and recorded in each of the causes in the

minutes of this court, in accordance with said opinion.

In the United States Circuit Court of Appeals for the Ninth Circuit.

No. 3551.

THE UNITED STATES OF AMERICA,
Appellant,

vs.

EDWARD L. COOKSEY, CHARLES E. GREGORY, CURTIS, COLLINS & HOLBROOK COMPANY, a Corporation,
Appellees.

Opinion U. S. Circuit Court of Appeals.

Upon Appeal from the Southern Division of the United States District Court for the Northern District of California, Second Division.

Before GILBERT, MORROW and HUNT, Circuit Judges.

This appeal, together with appeals in twenty-three companion cases, was taken from a decree dismissing a suit to cancel a patent for lands alleged to have been fraudulently obtained in violation of the provisions of the Timber and Stone Act (Act of Congress June 3, 1878, amended by Act of August 4, 1892). Cooksey's case is taken as representative.

The complaint alleges that the entryman swore falsely in that he swore that he applied for land named in the application for his own benefit,

whereas, before making his application he had agreed to convey the land to the Curtis, Collins and Holbrook Company; that that company knew of the fraud and procured Cooksey to make the entry for its benefit. The defense of *bona fide* purchaser is relied upon. Upon reference, the master found that the entries had been made under prior illegal agreements between the entrymen and one Tuman, but that the Curtis, Collins and Holbrook Company had no notice of such illegal arrangements and was an innocent purchaser. The substance of the findings is:

In 1901, Tuman endeavored to interest C. H. Holbrook, Sr., in certain timber lands in California. At that time persons owning lands within the limits of the national forests could reconvey them to the United States and select in lieu other lands of equal area outside of the national forests. In December, 1901, Holbrook, as party of the first part, and J. G. Curtis and T. D. Collins, as parties of the second part, agreed among themselves in writing as follows:

For a consideration of $1.00 from each of the parties to the other, and the promises contained, Holbrook agreed to sell Curtis and Collins 42,380 acres of timber land in California and to have title vested in Collins and Curtis as in the manner set forth in the contract at $7.50 per acre. The timber lands were described in a schedule. Holbrook was to obtain title to the 42,380 acres of forest reserve land for which he was to receive from the United States a like quantity of the timber lands, title to be secured to Curtis and Collins in the following manner:

The forest reserve lands were to be deeded to Thompson, trustee, to be held in trust by him in pursuance of the terms of the agreement. Curtis and Collins were to deposit $200,000 in bank to be used in purchasing forest reserve land at not exceeding $5.00 per acre. Payments were to be made by the bank to the owner of the forest reserve lands upon proper certificate of a designated attorney and the trustee, upon the written request of Holbrook, was to deed the forest reserve lands to the United States and to make application for the timber land and when title had been acquired to the timber land and upon notice from Holbrook that he had been fully paid, the trustee was to convey to Curtis and Collins, or to whomsoever they might direct. When title was acquired to the 42,380 acres, Holbrook was to be paid the balance of the purchase price named as $115,600.00 and should receive 789 shares of the stock of a corporation to be formed and certain sums in cash and the balance in interest bearing promissory notes of Curtis and Collins. The corporation was to have a capital stock of $500,000, divided into 5,000 shares of $100.00 each, and Curtis and Collins were to deed the lands to the corporation and 3,156 shares were to be issued to Curtis and Collins, 1,844 shares to remain in the treasury. Holbrook was to be a director and was vice-president and general manager. It was further provided that if Holbrook could not secure title to the whole of the 42,380 acres of land by forest reserve he might secure such titles through any other legal means or source, but in no event should he or the persons deeding the

same be paid for the lands thus acquired until the title thereto was certified to be good by the attorney and deeded to the trustee and when so certified the bank should pay for the land.

Holbrook and his son acquired the necessary scrip paying therefor from $3.00 to $5.50 per acre. Tuman was interested with Holbrook but this was not generally known. When Holbrook reported that it was difficult to obtain forest reserve scrip he advised Curtis and Collins that there were other valuable public lands, title to which could be secured under the Timber and Stone law. Curtis and Collins were satisfied provided good title would be obtained, and pursuant to oral agreement title was acquired under the Timber and Stone law to about 30,000 acres, including the lands involved in these suits. The Timber and Stone entries were made through agents of Tuman. One of the agents was told by Tuman that money would be advanced if necessary to pay for the land and that thereafter the entrymen could sell at a profit of $100.00 above all expenses and the agent would receive a location fee of $25.00 for each claim that Tuman purchased. Such agreements were carried out, the money was furnished by Tuman, and when the land was entered and the entryman was paid $100.00 above all expenses deeds were taken in the name of Charles E. Gregory who was not known to the entryman and whose name was used by Tuman and Holbrook. Nearly all the Timber and Stone entries were made in the last half of 1902 and the deeds to Gregory were made soon after proof by the entrymen, but

were not recorded until June, 1904. Gregory deeded to the corporation, Curtis, Collins and Holbrook Company, but knew nothing about the lands and merely permitted his name to be used. The Curtis, Collins and Holbrook Company was organized August 14, 1902, the incorporators being J. G. Curtis and his son D. G. Curtis; T. D. Collins and his son E. S. Collins; Charles H. Holbrook and his son Charles H. Holbrook, Jr., and Irving F. Moulton. Gregory assigned the contracts involved to the company at different times up to 1904, but none of the deeds were recorded until October, 1909, and some were not recorded until 1910 and 1911. By direction of Holbrook, on May 2, 1903, Gregory conveyed the land involved in the Cooksey entry to Curtis, Collins and Holbrook Company, conveyance being made in pursuance of the contract already referred to between Holbrook and Collins and Curtis. The master found that about May 2, 1903, the corporation, in consideration of the conveyance to it, issued to Curtis and Collins its stock at the rate of $7.50 or $10.00 per acre conveyed; that Curtis and Collins paid to Holbrook a valuable consideration for the conveyance to the corporation; that on May 2, 1903, neither Collins nor Curtis nor the corporation knew or were charged with knowledge of the fraud or of any fraud and none of them knew or was charged with knowledge of fraud in the obtaining of the patent until 1908, and that therefore, the Curtis, Collins and Holbrook Company at the time of the acquisition of the land conveyed by the patent was a *bona fide* purchaser for

a valuable consideration and without knowledge of any fraud against the United States.

HUNT, Judge, after stating the case:

The evidence sustains the finding that Cooksey, entryman, acquired the tract involved by unlawful practices in that he swore falsely when he made affidavit that prior to his entry he had not made an agreement whereby title to be acquired was to be conveyed to another person. Cooksey made final proof in October, 1903, and a few days afterwards conveyed to Gregory. The deed to Gregory was recorded September 10, 1904. Gregory, in May, 1903, conveyed to the corporation, and the deed was recorded in October, 1909. Gregory was ignorant of any fraud though he was a trustee for Holbrook and Tuman; and speaking generally of all the cases like Cooksey's, clearly Gregory as a grantee was a trustee for Holbrook and Tuman. But when we inquire into the attitude of Holbrook and Collins and Curtis, our conclusion is against that of the District Court.

Holbrook was vice-president and general manager of the corporation from the time of its organization in August, 1902, until 1904 when he sold his stock to Collins. Holbrook drew checks of the corporation and signed them. Tuman said that Holbrook talked with him, was advised of what was going on and knew that he was lending money to applicants for entries. The circumstances show that he did. Holbrook established a bank account at Susanville, California, and Tuman was authorized to draw against the account. In October, 1902, $1728 was

drawn from an account in the name of Collins and Holbrook in a San Francisco bank, and like amount was put to the credit of Holbrook in Susanville a few days afterwards. Later in the same year other withdrawals from the same account in a San Francisco bank were made and substantially equal sums put to Holbrook's credit in the Lassen County Bank. It is but a reasonable inference that this money was used by Tuman to make payments for entries.

Although Collins and Curtis lived in Pennsylvania, they, together with Holbrook and Tuman, looked at the lands and timber in 1902 after the contract was made. D. G. Curtis, Jr., who was treasurer of the company, also frequently went upon the lands.

Because of Tuman's claim that he was entitled to an equal interest with Holbrook in the enterprise, a quarrel arose which resulted in a suit by Tuman against Holbrook, filed in 1904, for half of the stock interest that Holbrook had received. T. D. Collins was instrumental in effecting a compromise of the suit whereby Tuman accepted 200 shares of stock in the company and $10,000 in money. After the present suit was instituted Collins bought 200 shares of stock from Tuman paying him $750.00 per share, a sum which Collins himself testified was much more than the stock was worth. The explanation given by Collins for paying such a high price for the stock was that he understood an outsider in whose integrity he had no confidence wished to buy the shares. When considered with the other circumstances the transaction is suspicious. It is in evi-

dence too that in 1904 and 1906 officials of the General Land Office were actively investigating entries of lands not involved in this case but in the same vicinity and which it was alleged by the officials had been sold to the Curtis, Collins and Holbrook Company. Tuman discussed the matter with Holbrook and testified that Holbrook was opposed to defending the entries. He also talked over the matter with E. S. Collins and T. D. Collins. T. D. Collins admitted that he had talked about these lands, but they were lost and "that was all there was to it." Holbrook owned about 900 out of 5,000 shares of the capital stock of the corporation, and there are so many circumstances which go to show that he knew what Tuman was doing that it must be held that he had notice, actual or constructive, of fraud committed by Tuman, in the agreements made with the entrymen as to the titles, and that his knowledge is imputable to the corporation. Moreover we cannot avoid the conclusion that T. D. Collins and J. G. Curtis, and their sons, were sufficiently informed of facts and circumstances to have put them upon inquiry.

Appellees had the burden of proof to establish the defense of *bona fide* purchasers. Wright-Blodgett Co. vs. United States, 236 U. S. 397. There the Court distinctly held that one who pleads that he is an innocent purchaser without notice must establish affirmatively his defense in order to defeat the right of the government to cancellation of a conveyance which fraud alone is shown to have induced. The same doctrine is laid down in Cooper vs. United

States, 220 Fed. 871; No. Colo. Coal Co. vs. United States, 234 Fed. 34. And in our judgment it was error on the part of the master and of the District Court to consider the case as one where the burden was on the government to prove that the purchaser had notice of the fraud. The evidence is undisputed that the purchases of lands were made in pursuance of the contract between Holbrook, party of the first part, and Collins and Curtis, parties of the second part. By the terms of the contract there was an obligation upon the parties of the second part to deposit a large sum to be used, not by Holbrook, but by the bank in payment for forest reserve lands, the lands to be deeded by the owners to the trustee and to be paid for by the bank upon Holbrook's certificate that the vendors were entitled to payment and the certificate of the attorney that the title was good. While the contract in its first part recites that Holbrook promises and agrees to sell the land described in the manner set forth thereafter in the contract in reality the contract is one and was carried out as one whereby the parties of the second part engaged the services of Holbrook as their agent to procure for them the title to the lands referred to, the purchase price of the lands to be paid by the parties of the second part out of their own funds and to be paid not to Holbrook but directly to the vendors of the lands. The corporation took deeds from Gregory but paid him no consideration whatever for the land. The purchase was not made from Holbrook and from Curtis and Collins individually because neither Holbrook nor Curtis nor Collins had the

title to the land and none of them were in possession thereof. In its real aspect the case is brought within the familiar rule that notice to, or knowledge of, an agent while acting within the scope of his authority and in reference to a matter over which his authority extends, is notice to, or knowledge of, the principal. Meachem on Agency, sec. 1803. We can find no substantial ground upon which to conclude that the case is excepted from the general rule.

It follows that Holbrook's knowledge is imputable to his principals, and they must be held to have known of the method by which the title to the lands was acquired. No. Colo. Coal Co. vs. United States, 234 Fed. 34.

The decree is reversed and the cause is remanded, with instructions to enter a decree cancelling the patent.

Reversed.

[Endorsed]: Opinion. Filed October 3, 1921. F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.

In the United States Circuit Court of Appeals for the Ninth Circuit.

No. 3554.

THE UNITED STATES OF AMERICA,
Appellant,

vs.

JOHN HUNTINGTON, CHARLES E. GREGORY, CURTIS, COLLINS & HOLBROOK COMPANY, et al.,
Appellees.

No. 3555.

THE UNITED STATES OF AMERICA,
Appellant,

vs.

REUBEN J. MITCHELL, CHARLES E. GREGORY, CURTIS, COLLINS & HOLBROOK COMPANY, a Corporation, PENNSYLVANIA LUMBER COMPANY, a Corporation,
Appellees.

No. 3556.

THE UNITED STATES OF AMERICA,
Appellant,

vs.

HENRIETTA TUMAN, CHARLES E. GREGORY, CURTIS, COLLINS & HOLBROOK COMPANY, a Corporation, PENNSYLVANIA LUMBER COMPANY, a Corporation,
Appellees.

No. 3557.

THE UNITED STATES OF AMERICA,
Appellant,

vs.

GERTIE TERRELL, CHARLES E. GREGORY, CURTIS, COLLINS & HOLBROOK COMPANY, a Corporation, PENNSYLVANIA LUMBER COMPANY, a Corporation,
Appellees.

No. 3558.

THE UNITED STATES OF AMERICA,
Appellant,

vs.

REBECCA H. HEPPE, CHARLES E. GREGORY, CURTIS, COLLINS & HOLBROOK COMPANY, a Corporation, PENNSYLVANIA LUMBER COMPANY, a Corporation,
Appellees.

No. 3559.

THE UNITED STATES OF AMERICA,
Appellant,

vs.

JACOB S. AID, CHARLES E. GREGORY, CURTIS, COLLINS & HOLBROOK COMPANY, a Corporation, PENNSYLVANIA LUMBER COMPANY, a Corporation,
Appellees.

No. 3560.

THE UNITED STATES OF AMERICA,
Appellant,

vs.

THOMAS L. AID, CHARLES E. GREGORY, CURTIS, COLLINS & HOLBROOK COMPANY, a Corporation, PENNSYLVANIA LUMBER COMPANY, a Corporation,
Appellees.

No. 3561.

THE UNITED STATES OF AMERICA,
Appellant,

vs.

HENRY MORLEY, CHARLES E. GREGORY, CURTIS, COLLINS & HOLBROOK COMPANY, a Corporation, PENNSYLVANIA LUMBER COMPANY, a Corporation,
Appellees.

No. 3562.

THE UNITED STATES OF AMERICA,
Appellant,

vs.

ELIJAH TAYLOR, CHARLES E. GREGORY, CURTIS, COLLINS & HOLBROOK COMPANY, a Corporation, PENNSYLVANIA LUMBER COMPANY, a Corporation,
Appellees.

No. 3563.

THE UNITED STATES OF AMERICA,
Appellant,

vs.

ROBERT CHARLES TAYLOR, CHARLES E. GREGORY, CURTIS, COLLINS & HOLBROOK COMPANY, a Corporation, PENNSYLVANIA LUMBER COMPANY, a Corporation,
Appellees.

No. 3564.

THE UNITED STATES OF AMERICA,
Appellant,

vs.

CARRIE M. ALLEN, CHARLES E. GREGORY, CURTIS, COLLINS & HOLBROOK COMPANY, a Corporation, PENNSYLVANIA LUMBER COMPANY, a Corporation, BLACK-WHITE COMPANY, a Corporation,
Appellees.

No. 3565.

THE UNITED STATES OF AMERICA,
Appellant,

vs.

JAMES D. BAKER, CHARLES E. GREGORY, CURTIS, COLLINS & HOLBROOK COMPANY, a Corporation, PENNSYLVANIA LUMBER COMPANY, a Corporation, BLACK-WHITE COMPANY, a Corporation,
Appellees.

No. 3566.

THE UNITED STATES OF AMERICA,
Appellant,

vs.

MAYME H. BAKER, CHARLES E. GREGORY, CURTIS, COLLINS & HOLBROOK COMPANY, a Corporation, PENNSYLVANIA LUMBER COMPANY, a Corporation, BLACK-WHITE COMPANY, a Corporation,
Appellees.

No. 3567.

THE UNITED STATES OF AMERICA,
Appellant,

vs.

JOHN L. GRAY, CHARLES E. GREGORY, CURTIS, COLLINS & HOLBROOK COMPANY, a Corporation, PENNSYLVANIA LUMBER COMPANY, a Corporation, BLACK-WHITE COMPANY, a Corporation,
Appellees.

No. 3568.

THE UNITED STATES OF AMERICA,
Appellant,

vs.

MARGARET J. BAKER, CHARLES E. GREGORY, CURTIS, COLLINS & HOLBROOK COMPANY, a Corporation, PENNSYLVANIA LUMBER COMPANY, a Corporation, BLACK-WHITE COMPANY, a Corporation,
Appellees.

No. 3569.

THE UNITED STATES OF AMERICA,
Appellant,

vs.

M. JACKSON SELF, CHARLES E. GREGORY, CURTIS, COLLINS & HOLBROOK COMPANY, a Corporation, PENNSYLVANIA LUMBER COMPANY, a Corporation, BLACK-WHITE COMPANY, a Corporation,
Appellees.

No. 3570.

THE UNITED STATES OF AMERICA,
Appellant,

vs.

JOHN VANORNUM, CHARLES E. GREGORY, CURTIS, COLLINS & HOLBROOK COMPANY, a Corporation, PENNSYLVANIA LUMBER COMPANY, a Corporation, BLACK-WHITE COMPANY, a Corporation,
Appellees.

No. 3571.

THE UNITED STATES OF AMERICA,
Appellant,

vs.

GEORGE D. GARDENHIRE, CHARLES E. GREGORY, CURTIS, COLLINS & HOLBROOK COMPANY, a Corporation, PENNSYLVANIA LUMBER COMPANY, a Corporation,
Appellees.

No. 3572.

THE UNITED STATES OF AMERICA,
Appellant,

vs.

JAMES D. AID, CHARLES E. GREGORY, CURTIS, COLLINS & HOLBROOK COMPANY, a Corporation, PENNSYLVANIA LUMBER COMPANY, a Corporation,
Appellees.

No. 3573.

THE UNITED STATES OF AMERICA,
Appellant,

vs.

JOHN W. AID, CHARLES E. GREGORY, CURTIS, COLLINS & HOLBROOK COMPANY, a Corporation, PENNSYLVANIA LUMBER COMPANY, a Corporation,
Appellees.

No. 3574.

THE UNITED STATES OF AMERICA,
Appellant,

vs.

CHARLES J. ALLEN, CHARLES E. GREGORY, CURTIS, COLLINS & HOLBROOK COMPANY, a Corporation, PENNSYLVANIA LUMBER COMPANY, a Corporation,
Appellees.

No. 3575.

THE UNITED STATES OF AMERICA,
Appellant,

vs.

CHARLES J. MONROE, CHARLES E. GREGORY, CURTIS, COLLINS & HOLBROOK COMPANY, a Corporation, PENNSYLVANIA LUMBER COMPANY, a Corporation,
Appellees.

No. 3576.

THE UNITED STATES OF AMERICA,
Appellant,

vs.

WILLIAM J. GARDENHIRE, CHARLES E. GREGORY, CURTIS, COLLINS & HOLBROOK COMPANY, a Corporation, PENNSYLVANIA LUMBER COMPANY, a Corporation,
Appellees.

Opinion U. S. Circuit Court of Appeals.

In each of the above-entitled cases the essential facts are similar to those found in the Cooksey case (*ante,* p. ——).

In Huntington's case entry was made October 16, 1902; deed to Gregory was executed nine days thereafter, but not recorded for about two years, and after patent was issued. The land was conveyed to the Curtis, Collins & Holbrook Company May 2, 1903, but the deed was not recorded until several years later.

In Mitchell's case the entry was made November 18, 1902, and on that day he executed a deed of conveyance to Gregory which was not recorded until September 14, 1904. Gregory conveyed on May 2, 1903, to the corporation but the deed was not recorded until several years had passed.

Henrietta Tuman's case disclosed that the entry was made September 20, 1902, the land conveyed to Gregory January 20, 1903, but the deed not recorded until September 10, 1904. Gregory conveyed to the corporation October 15, 1904, but the deed was not recorded until more than five years thereafter.

Gertie Terrell made entry September 3, 1902; deeded to Gregory on September 11, 1902, but the deed was not recorded for about two years and until after patent issued. Gregory conveyed to the corporation in December, 1902, but the deed was not recorded until more than seven years had passed.

The case of Rebecca H. Heppe shows that the entrywoman conveyed to Gregory about a week after she made entry but the deed was not recorded until two years afterwards and until several months had passed after patent was issued. Gregory conveyed to the corporation in December, 1902, but the deed was not recorded until years afterwards.

Jacob S. Aid made entry November 21, 1902, and deeded to Gregory December 9, 1902, but the deed was not recorded until about two years afterwards; patent issued June 8, 1904 and Gregory deeded to the company May 2, 1903, but the deed was not recorded until six or seven years afterwards.

Thomas L. Aid and James D. Aid made entries November 21, 1902, conveyed to Gregory December 9, 1902, but the deeds were not recorded until two years later. Gregory conveyed to the corporation May 2, 1903, and patents were issued in 1904, but the Gregory deeds were not recorded for several years afterwards.

In Henry Morley's case entry was made December 24, 1902; conveyance to Gregory was made December 19, 1902, but the deed was not put on record for two years, and until after patent was issued. Gregory's conveyance to the corporation was dated May 2, 1903, but it was not recorded for several years afterwards.

Elijah Taylor made entry November 29, 1902, conveyed to Gregory December 1, 1902, but the deed was not recorded until December 14, 1904. Patent issued June 8, 1904, and Gregory conveyed

to the company May 2, 1903, but the deed was not recorded until more than five years later.

Robert C. Taylor's entry was made November 29, 1902, and on December 1st thereafter Taylor conveyed to Gregory, and the deed was recorded September 23, 1904. Patent to Taylor issued June 8, 1904, and Gregory conveyed to the company May 2, 1903, but Gregory's deed to the company was not recorded until about seven years thereafter.

Carrie M. Allen made entry October 3, 1902, deeded to Gregory October 14, 1902, but the deed was not recorded until March 28, 1910. Patent was issued September 15, 1904 and Gregory conveyed to the corporation December, 1902, but the deed was not recorded until more than six years thereafter.

James D. Baker made entry August 23, 1902, and very shortly afterwards conveyed to Gregory, but the deed to Gregory was not recorded until September, 1904, and after patent had issued. Gregory conveyed to the corporation in December, 1902, but there is no record of the deed until years thereafter.

Mayme H. Baker made entry July 30, 1902, conveyed to Gregory September 6, 1902, and her deed was recorded November 12, 1904, after patent had been issued. Gregory conveyed to the corporation December 2, 1902, but the deed was not recorded until several years thereafter.

John L. Gray made entry November 29, 1902, and deeded to Gregory two days thereafter, but no

deed was recorded until 1909. Patent issued in April, 1905, and in 1903 Gregory had conveyed to the corporation, but the deed was not recorded until 1910.

Margaret J. Baker made entry August 29, 1902, and conveyed to Gregory September 6, 1902, but no deed was recorded until April, 1910, long after patent had issued. Gregory conveyed to the company December 2, 1902, but the deed was not put on record until more than six years afterwards.

M. J. Self made entry February 6, 1903, conveyed to Gregory March, 1903, but there is no record of the deed until May, 1905. Gregory conveyed to the corporation in May, 1903, but the deed was not recorded until more than five years afterwards.

John Vanornum made his entry January 26, 1903, and on February 24, 1903 deeded to Gregory. The deed was recorded October 29, 1904, shortly after patent issued. Gregory deeded to the corporation in May, 1903, but his deed was not recorded for several years.

George D. Gardenhire made entry September 22, 1902; soon thereafter conveyed to Gregory, but the deed was not recorded until March, 1911. Patent issued in December, 1904, and Gregory conveyed to the corporation in 1902, but the deed from Gregory was not recorded for more than six years afterwards.

John W. Aid made entry in November, 1902, conveyed to Gregory in December, 1902, and his deed was recorded in February, 1911; patent issued

in 1906 and Gregory conveyed to the company in 1903, but the deed was not recorded for several years thereafter.

Charles J. Allen made entry October, 1902; conveyed to Gregory about ten days afterwards and the deed was recorded in March, 1910. Gregory deeded to the corporation in November, 1902; patent was issued in January, 1905, but the deed to the company was not recorded for several years afterwards.

Charles J. Monroe made entry in September, 1902, and conveyed the land two days afterwards to Gregory, but the deed was not recorded until March, 1911, about five years after patent had issued. Gregory conveyed to the company in December, 1902, but the deed was not recorded until about seven years thereafter.

W. J. Gardenhire made entry September, 1902; conveyed to Gregory in the same month, but the deed was not recorded until 1910, or six years after issuance of patent. Gregory deeded to the company in December, 1902, but the deed was not recorded until years afterwards.

Upon the authority of United States vs. Cooksey et al., just heretofore decided, in each of the above-entitled cases the decree of the lower court is reversed and the cause is remanded, with directions to enter a decree cancelling the patent.

Reversed.

[Endorsed]: Opinion. Filed October 3, 1921. F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 3551.

THE UNITED STATES OF AMERICA,
Appellant,

vs.

EDWARD L. COOKSEY, CHARLES E. GREGORY, CURTIS, COLLINS & HOLBROOK COMPANY, a Corporation,
Appellees.

Decree U. S. Circuit Court of Appeals.

Appeal from the Southern Division of the District Court of the United States for the Northern District of California, Second Division.

This cause came on to be heard on the Transcript of the Record from the Southern Division of the District Court of the United States for the Northern District of California, Second Division, and was duly submitted.

On consideration whereof, it is now here ordered, adjudged, and decreed by this Court, that the decree of the said District Court in this cause be, and hereby is, reversed and cause remanded to the said District Court with instructions to enter a decree cancelling the patent.

[Endorsed]: Decree. Filed and entered October 3, 1921. F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.

At a stated term, to wit, the October Term, A. D. 1921, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the City and County of San Francisco, in the State of California, on Monday, the fifth day of December, in the year of our Lord one thousand nine hundred and twenty-one. Present: Honorable WILLIAM H. HUNT, Circuit Judge, Presiding; Honorable FRANK H. RUDKIN, District Judge.

No. 3551 and Nos. 3554 to and Including No. 3576.

THE UNITED STATES OF AMERICA,
Appellant,

vs.

EDWARD L. COOKSEY, CHARLES E. GREGORY, CURTIS, COLLINS & HOLBROOK COMPANY, a Corporation, et al.,
Appellees.

Order Denying Petition for Rehearing.

On consideration thereof, and by direction of the Honorable William B. Gilbert, William W. Morrow and William H. Hunt, Circuit Judges, before whom the causes were heard, it is ORDERED that the petition, filed November 1, 1921, on behalf of the appellees, for a rehearing in each of the above-entitled causes be, and hereby is denied.

In the United States Circuit Court of Appeals for the Ninth Circuit.

IN EQUITY—No. 3551.

THE UNITED STATES OF AMERICA,
Appellant,

vs.

EDWARD L. COOKSEY, CHARLES E. GREGORY, CURTIS, COLLINS & HOLBROOK COMPANY, a Corporation,
Appellees.

Petition for Appeal from Circuit Court of Appeals for the Ninth Circuit to Supreme Court of the United States.

CURTIS, COLLINS & HOLBROOK COMPANY, a corporation, one of the appellees above named, and petitioner herein, herewith presents its petition in the above-entitled cause for appeal to the Supreme Court of the United States, and in connection herewith, the petition of the said appellee respectfully shows and presents: That the above cause is now pending in the United States Circuit Court of Appeals for the Ninth Circuit, and that a final decree has therein been rendered on the 3d day of October, A. D. 1921, reversing the decree of the District Court of the United States for the Northern District of California, Second Division, and remanding the cause with instructions to enter a decree cancelling the patent issued by the United

States of America to Edward L. Cooksey; that subsequent to the above-mentioned decree of this Honorable Court, this appellee petitioned this Honorable Court for a rehearing of said cause, which petition for a rehearing was denied on the 5th day of December, A. D. 1921; that this Honorable Court has made an order staying the issuance of the Mandate until this appeal is perfected, that the matter in controversy in this cause exceeds the sum of one thousand dollars ($1,000) besides costs, as shown by affidavit annexed hereto; that this cause is one in which the judgment or decree of the Circuit Court of Appeals is not made final by any law of the United States, and is a proper cause to be reviewed by the Supreme Court of the United States on appeal.

That prior to the filing of this petition for an appeal herein, this petitioner and appellee caused to be personally served upon each of its co-appellees in this court or on all of those who could be found, a notice of its intention to prosecute this appeal, and an invitation to said co-appellees in this court to join with this appellee in the prosecution of this appeal, and in the event said co-appellees would not join this appellee in the prosecution of this appeal, then they were notified that this appellee would prosecute said appeal without them. That none of said co-appellees has joined with petitioner in said appeal, or in any way signified his assent to so do.

WHEREFORE, the said petitioner and appellee, feeling itself aggrieved by the judgment so rendered and entered by the United States Circuit Court of

Appeals for the Ninth Circuit, for the reasons set forth in the assignment of errors filed herewith, hereby appeals from said judgment of said last-named court to the Supreme Court of the United States and respectfully prays that said appeal be allowed to it in the above-entitled cause and an order be made granting such appeal and directing the clerk of the United States Circuit Court of Appeals for the Ninth Circuit to send the records and proceedings in the said cause, with all things concerning the same to the Supreme Court of the United States, in order that the errors complained of in the assignment of errors herewith filed by the said appellee, may be reviewed, and if error be found, corrected according to the laws and customs of the United States.

And Curtis, Collins & Holbrook Company, the petitioner and appellee herein, further prays that the order allowing said appeal herein, shall further provide for the severance as customary in such cases, pursuant to the notice above referred to, which was duly served upon all, or so many as could be found, of the co-appellees of this appellee in the court below, which notice has been duly filed with the clerk of this Honorable Court prior to the filing of this petition, and that said order shall provide as to all said co-appellees, that their interests may be severed from the interest of petitioner and ap-

pellee herein, and that petitioner and appellee may prosecute said appeal without them.

CURTIS, COLLINS & HOLBROOK COMPANY,

Petitioner and Appellee.

[Seal] CHARLES A. SHURTLEFF,

Secretary.

MORRIS R. CLARK,

Attorney for Curtis, Collins & Holbrook Company, Petitioner and Appellee.

State of California,

City and County of San Francisco,—ss.

Charles A. Shurtleff, being duly sworn, says:

I am the Secretary of the Curtis, Collins & Holbrook Company, the appellee herein; I am familiar with the land involved in this suit, and I know that the reasonable market value thereof is in excess of the sum of one thousand dollars ($1,000).

CHARLES A. SHURTLEFF.

Subscribed and sworn to before me this 17th day of February, 1922.

[Seal] W. W. HEALEY,

Notary Public in and for the City and County of San Francisco, State of California.

[Endorsed]: Petition for Appeal to Supreme Court U. S. Filed February 23, 1922. F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.

In the United States Circuit Court of Appeals for the Ninth Circuit.

IN EQUITY—No. 3551.

THE UNITED STATES OF AMERICA,
Appellant,

vs.

EDWARD L. COOKSEY, CHARLES E. GREGORY, CURTIS, COLLINS & HOLBROOK COMPANY, a Corporation,
Appellees.

Assignment of Errors.

CURTIS, COLLINS & HOLBROOK COMPANY, a corporation, an appellee in the above-entitled cause, in connection with its petition for appeal herein, presents and files therewith, the following assignment of errors, as to which matters and things it says that the decree entered herein on the 3d day of October, 1921, is erroneous, to wit:

1st. In refusing to enter a decree affirming the judgment of the District Court dismissing the bill of complaint.

2d. In making and entering of record a decree cancelling the patent referred to in the bill of complaint.

3d. In making and entering a decree reversing the District Court.

4th. In holding that C. H. Holbrook, Sr., was an agent of J. G. Curtis and T. D. Collins, or either of them, in the purchase of the land in suit.

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5th. In holding that said C. H. Holbrook, Sr., was an agent of the Curtis, Collins & Holbrook Company, appellee, in the purchase of said land.

6th. In failing to hold that said C. H. Holbrook, Sr., in all matters relating to the acquisition of said lands by said Curtis and Collins and the Curtis, Collins & Holbrook Company, a corporation, or any of them, was a vendor of said lands.

7th. In holding that C. H. Holbrook, Sr., had notice, actual or constructive, of any fraud on the part of one Tuman.

8th. In holding that any knowledge possessed by said C. H. Holbrook, Sr., of any fraud in connection with the entry of said lands should be imputed to said Curtis and said Collins and said corporation, or any of them.

9th. In failing to hold that if said C. H. Holbrook, Sr., had any knowledge of any fraud in connection with said entry, said knowledge was not imputable to either said Collins or said Curtis, or said Curtis, Collins & Holbrook Company, a corporation.

10th. In failing to hold that said Curtis and said Collins and said Curtis, Collins & Holbrook Company, a corporation, were and each and all were innocent purchasers of said land for a valuable consideration, and without notice, actual or imputed, of any fraud in connection with the entry thereof.

11th. In failing to hold that the Curtis, Collins & Holbrook Company, a corporation, was an innocent purchaser in good faith and for a valuable consideration, without notice of any fraud in connection with the entry of said land.

12th. In holding that there were certain circumstances sufficient to put said Curtis and said Collins and said Curtis, Collins & Holbrook Company, or any of them, on inquiry as to the facts pertaining to said entry.

13th. In holding that the purchase by Collins of Tuman's stock in Curtis, Collins & Holbrook Company was a suspicious circumstance.

14th. In directing that judgment be entered in favor of the Government and in failing, in the event of a reversal, to order a new trial.

15th. In failing to hold that the said C. H. Holbrook, in dealing with and selling the land described in the bill of complaint herein, was acting for himself and in his own interest and that the said interest of the said C. H. Holbrook was adverse to the interest of said Curtis and Collins and said Curtis, Collins & Holbrook Company, and each of them.

16th. In holding that any notice to or knowledge by the said C. H. Holbrook of fraud by the entrymen or any other person, in acquiring the lands described in the bill of complaint herein, from complainant, was notice to or the knowledge of, or was imputable to said Curtis and Collins and said Curtis, Collins & Holbrook Company, or either or any of them.

17th. In holding that said T. D. Collins knew of or was interested in, in any manner, the account or the funds represented thereby, in the Bank of California in the name of Holbrook & Collins.

18th. In holding that the fact that T. D. Collins aided in the settlement of the controversy between

George E. Tuman and C. H. Holbrook relative to the division between them of the profits realized by them from the sale to the said Curtis, Collins & Holbrook Company of the land described in the bill of complaint herein, indicated in any manner or at all that he, the said T. D. Collins, had knowledge of the fraud practiced upon complainant in the acquisition of such land or any part thereof.

19th. In holding and deciding that the defendant, Curtis, Collins & Holbrook Company was bound by the knowledge of Charles H. Holbrook of fraud practiced upon plaintiff in the acquisition of the patent to the land described in the bill of complaint.

20th. In holding and deciding that Collins or Curtis, or either of them, had knowledge of any fraud in connection with the entry or the acquisition of title to the land described in said bill of complaint.

21st. In holding and deciding that the evidence shows circumstances which go to show that T. D. Collins knew of any fraud in the entry or acquisition of said land and that he had notice, actual or constructive, of fraud committed by Tuman or any one else in the entry or acquisition of said land.

22d. In holding and deciding that the fact, shown by the evidence, that T. D. Collins, after consideration paid, conveyance had and patent issued, and after the institution of this suit, purchased Tuman's stock in Curtis, Collins & Holbrook Company, was a suspicious circumstance.

23d. In holding and deciding adversely to the Master of the District Court that Curtis, Collins &

Holbrook Company had the burden of proof to establish the defense of *bona fide* purchasers and then failing to remand this suit for a new trial, but on the contrary, ordering the patent to said land cancelled without an opportunity to Curtis, Collins & Holbrook Company to comply with the ruling of the Court as to the burden of proof.

24th. In considering evidence not properly before the Court.

25th. In considering evidence apparently adverse to Curtis, Collins & Holbrook Company, but excluded by the Master, without ruling upon the admissibility or inadmissibility of said evidence.

26th. In considering evidence excluded by the Master as to which necessarily Curtis, Collins & Holbrook Company had no opportunity nor occasion to rebut.

27th. In considering excluded evidence, the exclusion of which the United States did not make a basis of exception before said Court.

28th. In failing to hold that Curtis, Collins & Holbrook Company had fully met the burden of proof in producing evidence showing that it was a *bona fide* purchaser for value without notice of fraud in the entry or acquisition of said land.

WHEREFORE, said appellee, Curtis, Collins & Holbrook Company, a corporation, prays that said decree of the United States Circuit Court of Appeals for the Ninth Circuit be reversed and that said

appellee be given such further relief as may be appropriate.

MORRIS R. CLARK,
Attorney for Appellee, Curtis, Collins & Holbrook Company.

[Endorsed]: Assignment of Errors on Appeal to Supreme Court U. S. Filed February 23, 1922. F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.

State of California,
City and County of San Francisco,—ss.

J. G. De Forest, being duly sworn, deposes and says:

That he is attorney for certain parties in the within entitled suit, and that he is familiar with the record in said suit;

That, except as to the appellees whose names appear on the annexed notice or on an affidavit annexed thereto (including this affidavit), to have been served or to be dead or impossible, after diligent search, to be found, or if a corporation to be finally dissolved, those named as defendants in the complaint or bill herein are merely fictitious parties, none of whom was ever served with process in said suit, or appeared in said suit.

J. G. DE FOREST.

Subscribed and sworn to before me this 17th day of February, 1922.

[Seal] W. W. HEALEY,
Notary Public in and for the City and County of San Francisco, State of California.

In the United States Circuit Court of Appeals for the Ninth Circuit.

IN EQUITY—No. 3551.

THE UNITED STATES OF AMERICA,
Appellant,

vs.

EDWARD L. COOKSEY, CHARLES E. GREGORY, CURTIS, COLLINS & HOLBROOK COMPANY, a Corporation,
Appellees.

Summons and Severance.

To EDWARD L. COOKSEY, Defendant and Appellee, and to J. G. DE FOREST, Esq., His Attorney: To CHARLES E. GREGORY, Defendant and Appellee:

YOU AND EACH OF YOU ARE HEREBY NOTIFIED AND INVITED TO JOIN with the undersigned on or before the 6th day of February, 1922, to prosecute an appeal in the above-entitled cause from the United States Circuit Court of Appeals to the Supreme Court of the United States of America, to reverse the judgment and decree in the above-entitled cause with direction to enter a judgment canceling the patent issued by the

United States of America to Edward L. Cooksey, rendered against us jointly on the 3d day of October, 1921, in the above-entitled court, or you will be deemed to have acquiesced in said judgment and decree and the undersigned will prosecute said appeal without joining you as a party.

Dated: San Francisco, California, January 6, 1922.

CURTIS, COLLINS & HOLBROOK COMPANY.

[Seal] By CHARLES A. SHURTLEFF, Secretary.

MORRIS R. CLARK,

Attorney and Counsel for said Curtis, Collins & Holbrook Company.

Service of the above is accepted this 24th day of January, 1922, and we decline to appeal or join in an appeal.

EDWARD L. COOKSEY.
CHAS. E. GREGORY.

[Endorsed]: Summons and Severance. Filed February 23, 1922. F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.

At a stated term, to wit, the October Term, A. D. 1921, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the City and County of San Francisco, in the State of California, on Thursday, the twenty-third day of February, in the year of our Lord one thousand nine hundred

and twenty-two. Present: Honorable WILLIAM B. GILBERT, Senior Circuit Judge, Presiding; Honorable ERSKINE M. ROSS, Circuit Judge; Honorable WILLIAM H. HUNT, Circuit Judge.

No. 3551 and Nos. 3554 to and Including 3576.

THE UNITED STATES OF AMERICA,
Appellant,

vs.

EDWARD L. COOKSEY, CHARLES E. GREGORY, CURTIS, COLLINS & HOLBROOK COMPANY, a Corporation,
Appellees.

Order Allowing Appeal and Directing Severance and Fixing Amount of Supersedeas Bond.

This day came Curtis, Collins & Holbrook Company, one of the appellees in the above-entitled cause, and by Morris R. Clark, its attorney and counsel, presented its petition for an appeal, accompanied by an assignment of errors relied on, and a notice of summons and severance, with proper proof of service thereof, and upon motion duly made, asked the allowance of said appeal and an order of severance, whereupon it is ORDERED and ADJUDGED that the said appeal and claim of appeal be and the same is hereby allowed to the Supreme Court of the United States upon the filing of a bond on appeal, by the said appellee, in the sum of Five Hundred Dollars ($500.00), the same to operate as a supersedeas bond and also as a bond for costs and damages on appeal.

IT IS FURTHER ORDERED AND ADJUDGED that the notice of summons and severance herein having been served upon all or as many as could be found of the co-appellees of this appellee in the court below, either to join in this appeal or to decline to join herein, and no appearance having been made thereon, the said Curtis, Collins & Holbrook Company, a corporation, is hereby granted its appeal alone and for itself, and its interests are hereby severed as appellee of and from the interests of all others who were at any time or are now parties to the above-entitled cause, whether the interests of such parties were real or nominal only.

Premium charged for this bond is $10.00.

In the United States Circuit Court of Appeals for the Ninth Circuit.

IN EQUITY—No. 3551.

THE UNITED STATES OF AMERICA,
Appellant,

vs.

EDWARD L. COOKSEY, CHARLES E. GREGORY, CURTIS, COLLINS & HOLBROOK COMPANY, a Corporation,
Appellees.

Bond on Appeal.

KNOW ALL MEN BY THESE PRESENTS: That we, Curtis, Collins & Holbrook Company, a corporation, as principal, and American Surety Company of New York, a corporation organized

and existing under and by virtue of the laws of the State of New York, as surety, are held and firmly bound unto the United States of America, in the sum of Five Hundred Dollars ($500.00) and for the payment of which well and truly to be made to the United States of America, we bind ourselves and each of our successors and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 24th day of February, 1922.

The condition of this obligation is such that whereas the above-named Curtis, Collins & Holbrook Company has prosecuted an appeal to the Supreme Court of the United States to reverse the judgment and decree of the United States Circuit Court of Appeals for the Ninth Circuit made and entered in the above-entitled cause on the 3d day of October, 1921.

NOW, THEREFORE, if the said Curtis, Collins & Holbrook Company, a corporation, shall prosecute its said appeal to effect, and shall answer all damages and costs if it fails to make its said appeal good, then this obligation shall be void; otherwise to remain in full force and effect.

IN WITNESS WHEREOF, the said parties hereto have hereunto caused their respective corporate names to be signed, and their respective corporate seals to be affixed hereto, by their of-

ficers thereunto duly authorized, the day and year first above written.

CURTIS, COLLINS & HOLBROOK COMPANY,

Principal,

[Seal] By CHARLES A. SHURTLEFF,

Secretary.

AMERICAN SURETY COMPANY OF NEW YORK,

Surety,

By R. D. WELDON,

Resident Vice-president.

[Seal] Attest: E. C. MILLER,

Resident Assistant Secretary.

The foregoing bond approved as to form and sufficiency this 25th day of Feb., 1922.

W. H. HUNT,

Circuit Judge.

[Endorsed]: Bond on Appeal to Supreme Court U. S. Filed February 25, 1922. F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 3551.

THE UNITED STATES OF AMERICA,
Appellant,

vs.

EDWARD L. COOKSEY, CHARLES E. GREGORY, CURTIS, COLLINS & HOLBROOK COMPANY, a Corporation,
Appellees.

Certificate of Clerk U. S. Circuit Court of Appeals to Transcript of Record Upon Appeal to the Supreme Court of the United States.

I, Frank D. Monckton, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing one thousand four hundred and thirty-two (1,432) pages, numbered from and including 1 to and including 1,432, comprised in three volumes marked, respectively, Volume I, II, and III, to be a full, true and correct copy of the record under Rule 8 of the Supreme Court of the United States, in the above-entitled cause, including the assignment of errors on appeal to the Supreme Court of the United States, including the opinion filed in the said Circuit Court of Appeals in the above-entitled case, as the originals thereof remain on file and appear of record in my office, and that the same constitutes the transcript of record upon appeal

to the Supreme Court of the United States in the above-entitled cause.

ATTEST my hand and the seal of the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 17th day of March, A. D. 1922.

[Seal]

F. D. MONCKTON,
Clerk.
By Paul P. O'Brien,
Deputy Clerk.

In the United States Circuit Court of Appeals for the Ninth Circuit.

IN EQUITY—No. 3551.

THE UNITED STATES OF AMERICA,
Appellant.

vs.

EDWARD L. COOKSEY, CHARLES E. GREGORY, CURTIS, COLLINS & HOLBROOK COMPANY, a Corporation,
Appellees,

Citation.

The President of the United States of America, to the United States of America:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, at the City of Washington, in the District of Columbia, within sixty (60) days after the date of this citation, pursuant to an appeal allowed and filed in the clerk's office of the United States Circuit Court of Appeals for the Ninth Circuit, in the above-entitled cause, wherein the Curtis, Collins & Holbrook Company, a corporation, is appellant, and you are appellee, to show cause, if any there be, why the decree rendered against the said appellant, as in said appeal mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

WITNESS the Honorable WM. H. HUNT, Judge of the United States Circuit Court of Ap-

peals for the Ninth Circuit, this 23d day of Feb., 1922.

W. H. HUNT,
Judge, United States Circuit Court of Appeals,
Ninth Circuit.

Service by copy of the within citation on appeal is hereby admitted this 24th day of February 1922.

JOHN T. WILLIAMS,
E. M. L.,
U. S. Atty.,
Attorney for Appellee.

[Endorsed]: Citation on Appeal to Supreme Court U. S. Filed February 24, 1922. F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.